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ABSTRACT

This hearing was convened to inquire into the Department of Justice's compliance with the intent of Congress as expressed in section 10 of the Parental Kidnaping Prevention Act of 1980. The primary purpose of section 10(a) of the act was to involve federal authorities in helping state law enforcement agencies locate and apprehend abductor parents. It had been a longstanding policy of the Justice Department to avoid involving federal law enforcement authorities in domestic relations disputes, including parental abduction cases. In response to the act, the Justice Department began to intervene (1) when a violation of the Fugitive Felon Act had probably occurred; (2) when the victim child was in physical danger, abused, or neglected; and (3) when the Criminal Division had authorized filing a fugitive felon complaint. Much of the testimony presented to the subcommittee focused on the difficulties victim parents had in obtaining assistance from federal agents after children had been abducted. Included in the report is testimony from a panel of prosecutors who discussed particular cases of interstate and international parental kidnaping and described the nature of the cooperation received from the Department of Justice. A report of a survey of state and federal child abduction and restraint laws, circa 1981, is appended. (RH)

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IMPLEMENTATION OF THE PARENTAL KIDNAPING PREVENTION ACT OF 1980

ED234911

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF THE PARENTAL KIDNAPING PREVENTION ACT OF 1980

SEPTEMBER 24, 1981

Serial No. 99

PS 013853

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PARENTAL KIDNAPING PREVENTION ACT OF 1980

THURSDAY, SEPTEMBER 24, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2 p.m. in room 2237 of the Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Kastenmeier, Conyers, Schroeder, and Sawyer.

Staff present: Eric E. Sterling, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. HUGHES. The House Judiciary Committee Subcommittee on Crime will come to order.

This afternoon the Subcommittee on Crime takes up the question of parental kidnaping. This is a problem that, tragically, frequently has been ignored in discussions of the problem of crime in America. Too often, because these kidnapings arise from contested divorces, they are ignored as merely domestic relations cases.

However, child snatching is one of the most serious and damaging forms of child abuse that exists. The severity of the trauma of child snatching is one of the few points that behavioral scientists agree upon, almost without exception.

One of the rationales for the development of law is society's need to protect children. Almost every day my colleagues and I receive several letters that deal with the needs of our children for adequate nutrition, for challenging and comprehensive education, and for protection against drug peddlers, or exploitation by pornographers. Parental kidnaping, as a form of child abuse, is every bit as significant a component of our national crime problem as robbery or arson. Only in this instance the victims don't complain as loudly.

Traditionally, like so many other problems, this was a problem that was addressed by the States. As the problem increased and became interstate, a Federal role emerged. There is an appropriate role for the Federal Government in trying to deter parental kidnaping and trying to find the children when the crime occurs.

For one thing, this is a very large problem. Estimates of the number of cases are only best guesses. But those guesses run from some 25,000 to 100,000 cases per year. The Department of Justice in its testimony last year used the number of 100,000 cases to esti-

mate the costs of investigating these cases. One scholar at the Child Stealing Research Center has observed that as the rate of divorce rises and the number of single-parent households rises, that the frequency of parental kidnaping cases may be increasing by additional thousands of cases per year.

There is great tragedy hidden in those numbers. Prof. Henry Foster, a distinguished commentator in this area, has reported that probably only 7 out of 10 custodial parents, whose children are kidnapped, will ever see their children again. This is a vicious act, both to children and to the parents.

The second major reason why this is a federally related issue is that the problem involves interstate and foreign travel in so many cases.

This problem is illustrative of the nature of Federal and State relations. The primary jurisdiction is rooted in the State police power. Most of the cases can be solved by State officials. But there are particularly hard cases where the application of Federal resources is appropriate.

The cases that we will hear about today highlight the need for a proper interplay of Federal and State action. In the case of Kristine Uhlman, from whom we shall hear shortly, there was evidence that the perpetrator would imminently seek to leave the United States. Flight from the territory of the United States after the commission of a crime is a Federal matter. If Federal intervention could have promptly been obtained, it is possible that her children would have been prevented from being spirited out of the country.

This afternoon the subcommittee on crime is examining the implementation of the Parental Kidnaping Prevention Act of 1980. That act was passed after many years of deliberation in Congress and the great efforts of Senators Malcolm Wallop, Alan Cranston, Charles Mathias, and Congressman Charles Bennett.

Last year, the subcommittee on crime held hearings on the legislative proposals that were pending then. Today, some of those proposals are law.

I want to acknowledge the important role that my friend, Hal Sawyer, the ranking minority member of the subcommittee, has undertaken in this Congress through a bill, H.R. 1440, to make parental kidnaping a Federal offense. I commend him for recognizing the need for a committed Federal response in this area.

I also want to commend the leadership of my friend, Hamilton Fish, a very distinguished member of this subcommittee, who has sponsored a bill, H.R. 223, to create jurisdiction in the Federal court to enforce State court custody orders.

The hearing this afternoon is not directed at pending legislation, however. It is directed primarily at the question of the Department of Justice's compliance with the intent of Congress as expressed in section 10 of the Parental Kidnaping Prevention Act. That law calls upon the Department of Justice to use its powers under the Federal Fugitive Felon Act to assist States in enforcing their own child-snatching laws.

It is important to realize in examining this question that the Parental Kidnaping Prevention Act is a compromise between those who believe that parental kidnaping across State lines should be a Federal offense, and those who believe that it should not.

The Department of Justice forcefully expressed itself on the record in the 96th and earlier Congresses that it did not want a Federal offense to be created. The Department of Justice participated in creating the compromise that was adopted and reported in the joint explanatory statement of the conferees and in section 10 of the act. Congress went along with the request of the Department of Justice that a new offense not be created.

Acting Deputy Attorney General Paul Michel represented the Department in his testimony at the joint hearing of the Senate Judiciary and Labor and Human Resources Committees last year. He said, regarding the application of the Federal Fugitive Felon Act—and I am paraphrasing slightly for clarity, "I think your earlier allusion to whether Congress * * * wants to clarify its intent * * * is exactly the right area for congressional attention. As I said at the outset, the Department will execute the determinations that the Congress makes, but you have to decide. It is not our choice,"—the Department of Justice said that.

That statement is of course a correct statement of the proper relationship of Congress, elected by the people, and the executive branch, employed to execute the laws passed by the Congress.

Unfortunately, despite the unmistakably plain language of intent in section 10 of the Parental Kidnaping Prevention Act, we have reason to believe that the Department has not been fully executing the policy determinations that are the law of the United States.

In order to see clearly how the Department of Justice is executing the determinations made by Congress, the act requires periodic reports from the Attorney General. The first such report was transmitted to the Speaker of the House by Attorney General William French Smith on June 24, 1981, and, without objection, will be made a part of the record of this hearing. It sets forth the current policy and steps being taken by the Department of Justice to implement the act.

Our first witness is our colleague, Jim Sensenbrenner, a member of the Committee on the Judiciary. Then we are honored to hear from Dr. Doris Jonas Freed and Patricia Hoff on behalf of the American Bar Association, which has played an outstanding role in keeping the problem of parental kidnaping and the appropriate solutions high on the congressional agenda.

We will hear from a panel of prosecutors who will discuss particular cases of interstate and international parental kidnaping and the nature of the cooperation they have received from the Department of Justice. Accompanying the prosecutors is Kristine Uhlman, of Aurora, Colo., whose children were abducted from her home less than 2 weeks ago. She will be introduced by the distinguished Representative from Colorado, Patricia Schroeder, a member of the Judiciary Committee.

Marsha Elser, an attorney in private practice who specializes in custody law, will discuss the role that State criminal proceedings have in the overall custody area and will be able to shed light on the range of options available to solve a parental kidnaping case.

Finally, we will hear from Lawrence Lippe and Wayne Gilbert, representing the Department of Justice and the Federal Bureau of Investigation, to answer questions concerning the application of Public Law 96-611.

Does my colleague from Wisconsin desire to make an opening statement?

Mr. KASTENMEIER. No; thank you.

Mr. HUGHES. The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography or other similar methods. In accordance with committee rule 5(a), permission will be granted, unless there is objection.

Is there any objection?

[No response.]

Mr. HUGHES. Hearing none, such coverage is permitted.

Our first witness, as I indicated, is our friend and distinguished colleague, Jim Sensenbrenner, from the Ninth District of Wisconsin.

Jim served on the Crime Subcommittee in the 96th Congress, and was a cosponsor and conferee of the Parental Kidnaping Prevention Act of 1980.

Jim, it is delightful to have you before the subcommittee today. We have you statement which will be received in the record in full, without objection.

You may proceed in any way you wish.

TESTIMONY OF HON. F. JAMES SENSENBRENNER, REPRESENTATIVE IN CONGRESS FROM THE NINTH DISTRICT OF WISCONSIN

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman, and members of the Subcommittee on Crime.

I am pleased to appear before you today to discuss the perplexing problem of parental kidnaping that has plagued this country in recent years. During the last Congress, as a member of this subcommittee, I joined over 60 of my colleagues in cosponsoring a bill to address this disturbing trend. I also served as a conferee on the conference committee that fashioned the Parental Kidnaping Prevention Act of 1980. I would like to take this opportunity to provide you with some background on the legislative history in this area.

During our subcommittee hearing last year, we heard disturbing testimony from various parents whose children had been snatched. One of them, in response to my questions, indicated that she and her second husband spent $30,000 on private detectives to find her child, but to no avail. Even though she was concerned about the child's health, she was unable to get the FBI and the Justice Department to enter the case. She believed, as do I, that prompt intervention by the Federal Government might have made the difference in locating her child.

Shortly after that hearing, I was appointed as a conferee on the Domestic Violence Prevention and Services Act, H.R. 2977, 96th Congress, with respect to the parental kidnaping provisions which had been included in the Senate version of the bill. The Senate provisions, which were nearly identical to the bill that I cosponsored, contained a three-pronged approach. First, they required, under certain circumstances, patterned after the Uniform Child Custody Jurisdiction Act, that State courts give full faith and credit to the custody decisions of other States. Second, they allowed access to the Social Security Administration's Parent Locator Service to locate

abductors. Third, they amended the Federal kidnaping statute, title 18 United States Code, section 1201, which currently exempts parental kidnapers, to permit prosecutions where the abduction violates a custody order entitled to full faith and credit under the first section of the act.

During the meeting of the conferees, I expressed strong opposition to any dilution of these criminal penalties. My primary reason for this was a fear that milder language would not provide the strong direction to the executive branch that is needed when a major policy change is made by the Congress. However, the sentiment of the conference was clearly in favor of the compromise approach.

As a result, we included an expression of our intent that the Justice Department prosecute parental kidnapers under the Fugitive Felon Act, or Unlawful Flight to Avoid Prosecution [UFAP] Act, with the same vigor that they demonstrate with respect to other offenders who have committed State felonies and have crossed State lines. We also approved the full faith and credit provisions and the parent locator service provisions of the Senate bill.

When the domestic violence bill died a well-deserved death in the Senate, the enterprising Senator from Wyoming, Mr. Wallop, succeeded in adding our Domestic Violence Conference Report provisions as an amendment to, of all things, the pneumococcal vaccine bill, which was signed into law on December 28, 1980, by President Carter as Public Law 96-611.

Soon after its enactment, however, the problems which I had envisioned during the conference became painfully clear. My office was contacted by a determined assistant district attorney in Milwaukee County, Wis., Christopher Foley, who will be appearing before you later this afternoon. Following exhaustive State and local efforts to locate three snatched children, they were discovered in Florida. Lack of cooperation by Florida officials prompted Mr. Foley to contact the Justice Department for help under the Fugitive Felon Act. The issuance of a UFAP warrant by the U.S. Attorney's Office was apparently the deciding factor in the father's decision to return the children. Fortunately, this act took place before the Justice Department withdrew the warrant that it had issued, because, among other things, the U.S. Attorney failed to get the prior approval of the Criminal Division in Washington pursuant to Department guidelines.

I firmly believe that the Justice Department will have no incentive to get serious about parental kidnaping until the Congress does so. For that reason, I am introducing in the House of Representatives tomorrow a bill which would add a new section 1203 to title 18 of the United States Code.

My bill includes the criminal provisions of the Wallop amendment to the domestic violence bill. If enacted, it would impose criminal penalties for the intentional restraint of a child of age 14 or less by a relative by blood or marriage, guardian, foster parent, or agent of such person, in violation of another person's custody or visitation rights arising out of a custody determination entitled to benefit of the full faith and credit provisions we enacted last year.

Restraint is only penalized where the child is restrained without good cause. If the child is held in a place where he is not likely to

be found for more than a week, the penalty is imprisonment up to 6 months, or a maximum fine of $10,000. If the child is not concealed, the penalty is up to 30 days imprisonment and/or a $10,000 fine. However, in any case where the child is transported across the U.S. border, the maximum penalty is at least 1 year imprisonment, and a $10,000 fine.

This bill contains several restrictions on the imposition of criminal penalties, many of which are included on the basis of criticism voiced against the kidnaping bills introduced in prior Congresses.

First, the child must be willfully transported through interstate or foreign commerce.

Second, it is a bar to prosecution that the person whose custody rights have been violated fails to notify local law enforcement authorities within 120 days after the restraint began.

Third, the FBI may not commence an investigation until 30 days after the complainant has notified local law enforcement authorities, unless there is a grave danger to the child's physical or mental health, or in other appropriate cases.

Fourth, return of the child unharmed within 30 days after an arrest warrant is issued is a bar to prosecution for a first offense.

Fifth, any sentencing guidelines must provide for a reduction in penalty if the child is returned unharmed.

Mr. KASTENMEIER. Mr. Chairman, my statement doesn't include this.

Are you reading from the statement you filed with the committee?

Mr. SENSENBRENNER. The statement was amended in the last day or two, and revised copies of the statement should have been distributed.

Mr. HUGHES. Apparently we only have one of them up here.

Mr. SENSENBRENNER. Parenthetically, Mr. Chairman, I would state that a number of our colleagues in Congress including Senators Wallop and Cranston, Representative Hyde, and myself, have joined Senator Wallop in writing a letter to the Attorney General of the United States, the Honorable William French Smith, on March 9, 1981, in which the directives and guidelines of the Criminal Division in implementing the Parental Kidnaping Prevention Act of 1980 are very strongly protested.

We stated that the Criminal Division's directive ignores the language, spirit, and legislative history of the new law.

A response to that letter was sent to the authors on June 26, 1981, by Deputy Attorney General Edward Shmults which, in effect, stated that the Department was not misinterpreting the Congress intentions even though the authors of the legislation believed that the Department was.

I still believe the Department is misinterpreting the Congress intentions in passing the law last December, and I would like to ask unanimous consent that the exchange of correspondence between the Members of Congress and the Deputy Attorney General be included in the record at this point.

Mr. HUGHES. Both letters will be admitted, unless there is objection.

[No response.]

Mr. HUGHES. Hearing none, they will be admitted.

[The material follows:]

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., March 9, 1981.

Hon. WILLIAM FRENCH SMITH,
Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: We are writing to request your review of guidelines issued to United States attorneys by the Criminal Division on December 31, 1980 which purport to implement section 10 of the Parental Kidnaping Prevention Act of 1980, enacted as part of P.L. 96-611 on December 28, 1980. In our opinion, the new directive seriously misconstrues congressional intent with respect to the application of the Fugitive Felon Act to state felony child abduction cases involving interstate flight, and must promptly be amended in order for the new law to achieve its objectives of deterring childsnatching and fostering a cooperative relationship between state and federal law enforcement authorities in interstate childstealing cases.

By way of background, the Parental Kidnaping Prevention Act of 1980 grew out of legislation introduced in January 1979 by Senator Wallop to stem the wave of childsnatching in the United States. S. 105 and companion House measures contained three major provisions, one of which made it a federal misdemeanor to remove or retain a child in violation of an enforceable child custody determination. After hearings in both houses the Senate adopted S. 105 as an amendment to H.R. 2977, domestic violence legislation, which then went to conference.

House-Senate conferees deleted the misdemeanor provision and instead expressly declared that the Fugitive Felon Act, 18 U.S.C. 1073, is applicable to state felony parental kidnapping cases in the same manner as in any other state felony case where the other jurisdictional requirements of section 1073 were satisfied. In the Joint Explanatory Statement accompanying the Conference Report on H.R. 2977 at pages 41-43, the conferees expressly disapproved the policy of the Department of Justice as set forth in the United States Attorney's Manual which limited the application of the Fugitive Felon Act to those parental kidnapping cases where there is a showing that the "abducting parent, by reasons of his or her medical condition or acute pattern of behavior (e.g. alcoholism, interpersonal violence) presents a serious threat of physical injury to the child." It was the H.R. 2977 conference version of the criminal provision which was enacted as part of P.L. 96-611.

The Criminal Division's directive ignores the language, spirit, and legislative history of the new law. In fact, it seems designed to frustrate totally what Congress was attempting to achieve—a change in policy. Instead, what has been done is essentially to issue the old policy in new words. The new guidelines continue to require independent credible evidence establishing physical danger or serious neglect or abuse of a child before a fugitive warrant will be issued. In addition, prior authorization by the Criminal Division is mandated. This completely disregards Congress' clear expression that fugitive felon warrants be issued in state felony childstealing cases on the basis of the same criteria and subject to the same procedures which govern the issuance of warrants for all other state offenses, none of which require such corroboration, prior approval, or other special tests. We are also disturbed by the criminal Division's continued reference to felony childstealing as a "domestic matter." In clarifying the role for federal criminal authorities in parental kidnapping cases, Congress implicitly rejected the Department's long-standing characterization of these cases as simple domestic disputes.

Mr. Attorney General, the early feedback on the effect of the new guidelines is discouraging; at least one prosecutor has been denied a fugitive warrant notwithstanding a documented intent to extradite and prosecute the state law violation upon the apprehension of the fugitive, and other applications have not been acted upon at all.

We respectfully call upon you to undertake a review and revision of the fugitive felon directive in accordance with Section 10 of P.L. 96-611. We stand ready to assist this Administration in implementing the Parental Kidnaping Prevention Act of 1980 and invite you to consult freely with us toward that end.

Yours sincerely,

MALCOLM WALLOP,
U.S. Senator.
HENRY J. HYDE,
U.S. Representative.
DAVE DURENBERGER,
U.S. Senator.

DON EDWARDS,
U.S. Representative.
CHARLES E. BENNETT,
U.S. Representative.
HAROLD S. SAWYER,
U.S. Representative.
ALAN CRANSTON,
U.S. Senator.
F. JAMES SENSENBRENNER, Jr.,
U.S. Representative.
WILLIAM J. HUGHES,
U.S. Representative.
CHARLES McC. MATHIAS, Jr.,
U.S. Senator.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 26, 1981.

Hon. WILLIAM J. HUGHES,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HUGHES: This is in further response to your letter of March 9, 1981, signed by nine other Senators and Members of Congress, objecting to the Department's policy guidelines limiting FBI involvement under the Fugitive Felon Act in "child snatching" cases, and requesting that these guidelines be revised to conform with the expression of Congressional intent set forth in section 10 of the Parental Kidnaping Prevention Act of 1980 (the Act) (Public Law 96-611).

Because of the concern expressed by you and your colleagues, the Attorney General requested a review of our policy guidelines be undertaken. Based on this review, the Department of Justice is convinced there is a demonstrated need for policy limitations on Federal involvement in "child snatching" cases under the Fugitive Felon Act. However, as a result of that review, the policy limitations have been modified as indicated below.

The Department's experience in these matters indicates that a "child snatcher" is a different kind of offender than the ordinary felon fleeing from state justice. We note that a significant number of states classify parental abduction or custodial interference as a misdemeanor not a felony. Moreover, it appears that state prosecutors often charge an abducting parent with a criminal violation as an accommodation to the victim parent, with no real intention of ultimately prosecuting the criminal charge against the abducting parent. Over the past several years, we have authorized FBI involvement in a significant number of these cases, consistent with existing policy guidelines. We have found that in repeated instances the state felony charges against the abducting parent have been dropped shortly after complaining parent regained custody of the child. We suggest that the use of the Fugitive Felon Act in situations where state authorities have no actual intention of prosecuting the underlying criminal charges would amount to an abuse of legal process.

In the past four months, a variety of "child snatching" cases have been brought to our attention which, in our view, confirm the need for policy limitations. In two cases, the abducting parents were, in effect, given temporary custody in the asylum state despite outstanding felony "child snatching" warrants in other states. In two other cases, the parents were charged with felonies in spite of the fact they had custody decrees in other states. In at least three cases, the locations of the abducting parent were known, but law enforcement authorities in the asylum states refused to honor the out-of-state warrants, possibly because the asylum states classified child snatching as a misdemeanor. In two other cases, the asylum states refused extradition. In these latter cases, the request for FBI assistance apparently was an effort to avoid the extradition process. The Fugitive Felon Act, of course, is not an alternative to extradition, and individuals arrested on a Federal fugitive warrant should not be removed from the asylum state under Rule 40, Federal Rules of Criminal Procedure, when no Federal prosecution is intended. See *United States* v. *Love*, 425 F. Supp. 1248 (S.D.N.Y. 1977).

I wish to emphasize that the Department's policy is not intended to frustrate the spirit of section 10 of the Act. To the contrary, our policy is now less restrictive than in

the past. Prior to the Act we required "convincing evidence that a child is in danger of serious bodily harm" before involving the FBI in a "child snatching" case. Under new guidelines established after enactment of the Act, we became involved in these matters if there was independent credible information that the child was being "seriously neglected or seriously abused".

As a result of that policy change, we authorized FBI involvement in six "child snatching" cases as of March 31, 1981, the cut-off date used for compiling data for the first report required by section 10(b) of the Act. Since March 31, 1981, we have authorized FBI involvement in at least seven additional cases. Recently, as a result of our policy review, the guidelines have been modified to permit FBI involvement under the Fugitive Felon Act in those instances where there is independent credible information establishing that the child is in physical danger or is then in a condition of abuse or neglect. We believe that this policy modification will result in a significant increase in Federal involvement, when compared with previous years.

Our present policy guidelines are an effort to comply with Congressional intent by extending Federal involvement to cases involving abuse and neglect. Consistent with our other criminal law enforcement responsibilities, we expect to furnish an increased level of assistance to the states in the legitimate enforcement of their criminal laws. At the same time, we hope to avoid the utilization of FBI investigative resources to enforce civil obligations.

I hope the foregoing information clarifies our position on this matter.

Sincerely,

EDWARD C. SCHMULTS,
Deputy Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 24, 1981.

The SPEAKER,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: In accordance with Section 10(b) of the Parental Kidnaping Prevention Act of 1980, enclosed is our report to the Congress with respect to steps taken by the Department of Justice to comply with the intent of Congress that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes.

Sincerely,

WILLIAM FRENCH SMITH,
Attorney General.

Enclosure.

FIRST REPORT TO CONGRESS ON IMPLEMENTATION OF PARENTAL KIDNAPING PREVENTION ACT OF 1980

Pursuant to Section 10 of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611) (hereafter the Act), the following report sets forth the steps taken by the Department of Justice to comply with the intent of Congress that title 18, United States Code, Section 1073, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes.

Title 18, United States Code, Section 1073 (hereafter the Fugitive Felon Act), provides in pertinent part:

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State—shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Although drawn as a penal statute, and therefore permitting prosecution by the Federal Government for its violation, the primary purpose of the Fugitive Felon Act is to permit the FBI to assist in the location and apprehension of fugitives from state justice. To obtain a Federal warrant under the Fugitive Felon Act, there must be probable cause to believe that a fugitive charged with a state felony has fled from that state and that his flight was for the purpose of avoiding prosecution.

The Fugitive Felon Act is not an alternative to interstate extradition. When the FBI locates and arrests an individual on a fugitive felon warrant, the fugitive is not removed to the state from which he fled pursuant to the procedures set forth in Rule 40(b) of the Federal Rules of Criminal Procedure. The procedure followed in all such cases is that the fugitive is turned over to the custody of local law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the Federal fugitive warrant is promptly dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance under the Fugitive Felon Act, give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring him to trial on the state charge for which he is sought. Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is already known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding, and request law enforcement authorities in the asylum state to place the fugitive in custody until there has been a resolution of the extradition proceeding.

With regard to parental kidnapings or "child snatchings," it has been a long standing policy of the Department to avoid involving Federal law enforcement authorities in situations which are essentially domestic relations controversies. This policy was based, in part, on the parental abduction exception in the Federal Kidnaping Statute, Title 18, United States Code. Section 1201, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department did not authorize FBI involvement under the Fugitive Felon Act for the purpose of apprehending a parent charged with a state felony, such as child stealing or custodial interference, which arose out of the abduction of his own minor child. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

On December 28, 1980, the Parental Kidnaping Prevention Act of 1980 was enacted as part of Public Law 96-611. In Section 10(a) of that Act, the Congress expressly declared its intent that the Fugitive Felon Act apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes. Section 10(b) of that Act directs the Attorney General to submit periodic reports to the Congress with respect to steps taken to comply with this express intent of Congress.

On January 13, 1981, a meeting of Department and FBI representatives was held concerning implementation of the new legislation. As a result of this meeting, the Department's policy with regard to use of the Fugitive Felon Act in parental kidnapings was revised, and procedures for compiling data on parental kidnapings were approved.

In a teletype to all United States Attorneys dated January 21, 1981, the revised policy was first announced. That revision was then incorporated into the United States Attorneys' Manual at Section 9-69.421. The pertinent part of that revision is as follows:

"Congress now has expressly stated that 18 U.S.C. 1073 be applied in parental abduction situations. In our view, the expression of Congressional intent does not require routine Federal involvement in parental abduction situations and is consistent with the Department's general policy militating against Federal involvement in domestic matters, including abduction situations. Furthermore, the sound exercise of prosecutorial discretion and the need for careful utilization of Department manpower and resources will require selectivity in seeking Federal warrants in these situations.

In an effort to fulfill Congressional intent consistent with its other responsibilities, the Department will authorize FBI involvement under 18 U.S.C. 1073 in parental kidnaping cases where there is independent credible information establishing that the child is in physical danger or is being seriously neglected or seriously abused. Examples of such independent credible information include police investigations or prior domestic complaints to police or welfare agencies.

"In view of the reporting requirements of the Parental Kidnaping Prevention Act of 1980, it is imperative that the local office of the FBI be furnished with information regarding each parental kidnaping directly referred to the United States Attorney's office so that the FBI may gather data for the statutorily required reports.

"In order to maintain a uniform national policy, and in view of the Department's general policy against involvement in domestic relations controversies, Criminal Division authorization must be obtained before seeking a fugitive felon warrant in parental abduction situations."

Subsequently, as a result of a review of that policy, our guidelines have been recently modified to permit FBI involvement under the Fugitive Felon Act in those situations where there is "independent credible information that the child is in physical danger or is then in a condition of abuse or neglect."

The responsibility for compiling the necessary data to comply with the reporting requirements of the Act has been assigned to the FBI. It was decided that in keeping with the spirit of the Act, the FBI would compile data on all complaints alleging parental abductions, rather than limiting the data to requests received from state law enforcement authorities for assistance under the Fugitive Felon Act in locating a defendant charged with felony "child snatching." In addition, we directed all United States Attorneys to furnish the FBI with information about each parental kidnaping directly referred to a United States Attorney's office.

By communication dated February 20, 1981, each FBI field division was furnished with a supply of forms (FD-595), which were specifically designed to collect parental kidnaping data. Furthermore, each field division was instructed to conduct a file review to ascertain any parental kidnaping complaints that may have been reported to the FBI since December 28, 1980. It is believed that these procedures will continue to provide data compilation that is complete and accurate.

By memorandum dated April 9, 1981, the FBI furnished the Department with the data compiled as of March 31, 1981. A total of 80 parental kidnaping forms (FD-595) had been received from 37 field divisions covering 30 states. Thirty-seven of these complaints involved parental kidnapings that had occurred prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the Act. Of the total of 80 complaints, 56 were received from sources such as mothers, fathers, step-fathers, grandparents, private attorney, and some law enforcement officials, and in these 56 cases there was no probable cause to believe the abducting parent had fled interstate to avoid prosecution for a felony. Quite often in these situations, the abducting parent was not in violation of any child custody decree, or had not charged with any offense as a result of the abduction, or had been charged with a "child snatching" offense which was classified as a misdemeanor under state law.

Therefore, of the 80 complaints received, only 24 apparently met the statutory requirements for assistance under the Fugitive Felon Act. As of March 31, 1981, consistent with our initial policy revision set forth in the United States Attorney's Manual, authorization to seek fugitive felon warrants was granted in six cases, 13 requests were denied, and five requests were still pending. Since March 31, 1981, we have authorized FBI involvement in at least seven additional cases.

The Department is aware that any policy guidelines limiting Federal involvement in parental kidnapings are perceived by some to be inconsistent with the expression of Congressional intent in Section 10 of the Act. It has been suggested that the Department has incorrectly characterized parental kidnapings as being essentially domestic relations controversies, and that we should authorize FBI involvement in these cases based on the same criteria that would be applied to other state felony charges.

We wish to emphasize that the Department's policy revisions are not intended to frustrate the spirit of Section 10 of the Act. To the contrary, our policy now is less restrictive than in the past. Prior to the Act we required "convincing evidence that a child is in danger of serious bodily harm" before involving the FBI in a "child snatching" case. Under our most recent policy revision, we will become involved if there is independent credible information that the child is "then in a condition of abuse or neglect."

Our experience has shown that a "child snatcher" is a different kind of offender than an ordinary felon fleeing from state justice. We note that a significant number of states classify parental child stealing or custodial interference as a misdemeanor not a felony. Moreover, even proponents of Federal involvement acknowledge that as a practical matter, "child snatching" is not prosecuted under the criminal laws of most states. See e.g., Child Snatching and Custodial Fights; The Case for the Uniform Child Custody Jurisdiction Act, 28 Hastings Law Journal 1011 (1977).

This observation confirms our suspicions based on our experience in "child snatching" cases. Over the past several years, we have authorized FBI involvement in a significant number of these cases, consistent with policy guidelines. We have found that in repeated instances, the state felony charges against the abducting parent have been dropped shortly after the complaining parent regained custody of the child.

From a practical law enforcement perspective, we believe we cannot routinely involve the FBI in "child snatching" cases based on the same criteria that would be applied to other state felonies, such as murder and armed robbery. The existence of

conflicting child custody decrees in some cases, and the apparent unwillingness of some authorities to honor felony "child snatching" warrants and extradition requests from other states, makes "child snatching" a unique kind of criminal offense. For example, we are aware of two recent requests in which the abducting parents obtained temporary custody in the asylum states in spite of outstanding felony "child snatching" warrants in other states. In two other requests, parents were charged with felonies in spite of the fact that they had obtained custody decrees in other states. We are aware of at least three requests in which the location of the abducting parent was known, but local law enforcement authorities in the asylum state would not execute the out-of-state "child snatching" warrant. Further, we are aware of two recent situations in which extradition for "child snatching" was refused.

To routinely involve the FBI in such situations would not, in our view, serve a genuine criminal law enforcement purpose. It would appear that many states regard "child snatching" as quasi-civil in nature, even though it may be classified as a felony under state law. Accordingly, we believe there is a demonstrated need for some policy limitations on Federal involvement in these situations.

Our present policy guidelines are an effort to comply with Congressional intent by extending Federal involvement to cases involving abuse or neglect. Consistent with our other criminal law enforcement obligations we shall continue to furnish an increased level of Federal assistance to the states in the legitimate enforcement of their criminal laws. At the same time we shall avoid utilizing the investigative resources of the FBI to enforce civil obligations.

Finally, we note that Section 9 of the Act provides for expanded use of the Parent Locator Service (FPLS) in the Department of Health and Human Services so that it can be used to locate a parent or child for the purpose of enforcing any state or Federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody determination. Thus, a remedy is available in "child snatching" cases which do not come within our policy guidelines. Further, if a local felony warrant is issued arising out of a "child snatching" episode, the local authorities can enter the pertinent data into the FBI operated National Crime Information Center (NCIC). If the abducting parent subsequently is stopped by a law enforcement agency and a check is made with NCIC, the abducting parent can be arrested and held for extradition to the demanding state. This service is available to law enforcement agencies in all "child snatching" cases where a felony warrant has been issued, whether or not the case comes within our policy guidelines.

Mr. SENSENBRENNER. I believe that prompt enactment of this new legislation is needed. I am hopeful that this subcommittee will seriously consider reporting to the full committee the criminal provisions that eluded us last year.

I thank the Chair for allowing me to appear this afternoon, and I would be happy to answer questions.

Mr. HUGHES. Thank you.

Jim, let me first commend you for your leadership in this area. I know that you were one of the people in conference that pursued another approach, feeling that the Justice Department still used the ambiguities for a reason not to execute warrants under the Fugitive Felon Act.

And I take it you are still of that mind, that until we have a Federal offense created by statutory law, that we are not going to seriously address the problem.

Is that correct?

Mr. SENSENBRENNER. I believe that very firmly, Mr. Chairman. I think the procedure that I outlined just a moment ago will probably be a sufficient nudge to get a number of these cases resolved before the FBI gets involved—that is, the issuance of a warrant, and not having the FBI get involved for 30 days, unless there is a showing that the child's physical or mental health is endangered.

I think once the word that there is a pending Federal warrant reaches the kidnaper, a number of these children will be returned unharmed and the custody orders will be complied with.

There was a legitimate criticism of previous legislation; I am certainly cognizant of that. I believe the approach that I have outlined meets that criticism.

Mr. HUGHES. The gentleman from Wisconsin.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

As one who really is not particularly knowledgeable in this area, this particular issue, as is my colleague, the witness, and as is the chairman, I assume there must be reasons why the Federal kidnaping statute, as you state correctly, currently exempts parental kidnapers. Do you have any comment on that?

Mr. SENSENBRENNER. The argument against criminal penalties that was made in the last Congress basically was founded on the premise that Federal law enforcement agencies have better things to do than to enforce custody orders when a parental kidnaping occurs.

However, the Subcommittee on Crime in the previous Congress received very ample testimony that without Federal involvement, it was practically impossible to get law enforcement authorities in another State to enforce a custody award that had been made in the course of a divorce proceeding in the State of residence of the custodial parent, as well as the other parent, when the divorce took place. The full faith and credit procedures are a help, but it is a very cumbersome legal procedure going from one State into a court in another State to get the full faith and credit provisions enforced.

This is particularly true when law enforcement personnel's time and efforts are involved. That is why I think that there must be some kind of a Federal nexus that could be used as a last resort when local law enforcement actually comes up against a roadblock.

Mr. KASTENMEIER. Again, from what the chairman said in his opening statement, and from what you said in your own statement, the Justice Department, and perhaps the Federal Bureau of Investigation, last year seemed either reluctant to seek full enforcement powers or to proceed under the act for various reasons.

Is this your understanding?

Mr. SENSENBRENNER. It is my understanding, and I certainly would not want to put any words in the Justice Department's mouth, since I understand that witnesses from the Department will be appearing later on this afternoon. However, the Department's reply that was sent to Senators Cranston and Wallop and Representative Hyde, and myself, and others, a copy of which has now been included into the record, shows that there have not been very many uses of the Federal Kidnaping Prevention Act of 1980. I believe to the end of March, it was used on a total of six occasions. From March until the end of June, it was used a total of seven times.

The law is not worth the paper it's written on unless it is utilized. I am afraid that there is a great lack of utilization of the law that was passed last year.

Mr. KASTENMEIER. Notwithstanding whatever compelling case can be made for greater Federal intervention in these matters, it would appear to me to be flying in the face of the position by this

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administration and the past administration, at least in criminal matters, to attempt to extend the Federal jurisdiction, criminal jurisdiction. That is to say, if anything, the mood seems to be for a less intrusive Federal role in these matters, rather than a greater Federal role, in terms of domestic matters becoming elevated to a criminal matter or not.

Do you find any inconsistency on those grounds, that, really, we are tending toward less Federal intrusion, rather than more?

Mr. SENSENBRENNER. Mr. Kastenmeier, you are correct in saying that this would be an expansion of Federal criminal jurisdiction. The record, in my opinion, is more than ample to show that such an expansion of Federal criminal jurisdiction is in order. There are repeated instances where attempting to use the State court system and State law enforcement personnel to track down the people who have kidnaped their kids in violation of a custody order, and have spirited them away to other States, or even foreign countries, is simply not effective. While I certainly want to make sure that our Federal law enforcement apparatus is effectively used, it seems to me, as I indicated in my testimony, that if we use it when all else fails, we will be able to solve some of these cases and get a legitimate order of a court, which is entitled to full faith and credit enforced.

The way the parental kidnapers have been working and, in many instances, getting away with it is that they take their case to court and lose. After they lose, they snatch the child away, irrespective of what the court's decree is. That's not right; and we ought to be doing something about that.

Mr. KASTENMEIER. I would only state it is unfortunate that we are not able to enable State authorities to more effectively seek relief, so that these domestic problems don't become Federal problems.

I yield back the balance of my time.

Mr. HUGHES. The gentleman from Michigan, the ranking minority member, Mr. Sawyer, is recognized for 5 minutes.

Mr. SAWYER. I would like first to compliment the gentleman from Wisconsin on his leadership.

This is an issue that I have been concerned about for a long period of time. In fact, I have introduced H.R. 1440 in this Congress. I had a bill in the last Congress as well.

Was it the gentleman from Wisconsin who submitted his name to the Parent Locator Service, and got a report back that he didn't have any known address? Or was that someone else?

Mr. SENSENBRENNER. That was not me. But we did receive testimony before the subcommittee that someone in California put in the names of both of the U.S. Senators from California, several Federal judges, Governor Brown as well as his name and the Parent Locator Service could not give the known address for any of these individuals who are in the public eye.

Mr. SAWYER. They can only find the medfly out there. [Laughter.]

This really is a big concern. I have seen estimates that there are 100,000 each year where the parent not entitled to custody either retains temporary custody permanently, or just absconds with the child.

The problem in Michigan, where I was prosecutor, is you have got what is a capital offense. There is no special statute for parental kidnaping so you have to come under the general kidnaping law. In most of these cases, you really have no desire to charge a capital offense. That, is killing a gnat with a sledgehammer. In fact, everyone is reluctant to issue that kind of warrant, even when the abductor is within the State. And, of course, when they get out of the state, no one is going to do much about it if you are charging a capital offense for a parent's taking a child under emotional circumstances and not obviously intending any harm to the child.

The Parent Locator Service is in fact useless, even to try and find nonsupporting parents. What you need is access to the NCIC, for which you need an outstanding State warrant. They won't do it in these kinds of cases.

It seems to me what we really need, and I agree with you, is at least a 1-year misdemeanor charge, so you can have the Federal Government pay some attention to this thing, and get some action on it. It is a problem of major proportion.

I commend the gentleman for following up on it, because sooner or later we are going to have to do something about it. We need to get these names on the NCIC. Then, they do a petty good job of picking them up. We can't do it now with the way the law sits.

Thank you. I appreciate your efforts.

Mr. HUGHES. Mr. Conyers?

Mr. CONYERS. Thank you, Mr. Chairman.

I would like to ask our colleague whether or not he has any suggestions about how the state law enforcement apparatus could be more effective?

Mr. SENSENBRENNER. I don't pretend to be an expert on State law enforcement and procedures in prosecutors' offices. Our colleague from Michigan, Mr. Sawyer, was a prosecutor for a while, and it is my understanding that there will be some experts who do serve in prosecutors' offices, appearing before the subcommittee later on in the afternoon.

I will just point out one case arising out of Milwaukee County with which I am more familiar.

In that case, there was a Federal warrant issued, and subsequently canceled because they did not get the approval of the Criminal Division in Washington. During the time the Federal fugitive warrant was out, they picked up the absconding parent. The parent did return the children. It was because the Federal warrant was pending that the children were returned to the parent who had been awarded custody by the circuit court in Milwaukee County

So I do not think you are going to have to call out the FBI on many of these cases. The mere threat of a Federal warrant might be sufficient to prompt the kidnaper into returning the children unharmed.

Mr. CONYERS. Would it become a Federal problem if, indeed, the States are strapped, as our colleague from Michigan has indicated our State is strapped; so that we would end up with a State problem becoming a federal problem?

Mr. SENSENBRENNER. Well, I think it is a federal problem now. The complaints that I have heard about the States being strapped

are by and large not because of financial restrictions on State governments or local governments, but simply because the States do not have the tools to find out where the absconding parent is hiding the children. Through use of the facilities that are available on the Federal level, I think we would have a better opportunity to find out where those children are.

Mr. CONYERS. Would property taken by the absconding spouse be charged under the proposed warrant under the proposed legislation?

Mr. SENSENBRENNER. If you will indulge me for just a second?

The answer to your question, Mr. Conyers, is no. The person who would be subject to prosecution would be the person who intentionally restrained the child in violation of any other person's right of custody or visitation arising from a custody determination entitled to full faith and credit.

So—children, yes; property, no.

Mr. CONYERS. Would you share the view that's been expressed by the member that the locator service isn't worth the computer paper it is printed on?

Mr. SENSENBRENNER. I concur with that 100 percent.

Mr. CONYERS. And are you aware of what the provision is among the various versions of the Federal Criminal Code with reference to this subject?

Mr. SENSENBRENNER. No; I am not aware of that.

There was a provision in the version of the Criminal Code that was considered and reported by the Judiciary Committee in the last Congress relative to this particular issue. The House Judiciary Committee version adopted the recommendation of the subcommittee on criminal justice in the 96th Congress that only the full faith and credit and parent locator service provisions be included in the reported version.

We did that in other legislation last year. I think the evidence is mounting that what was done last year was not effective in solving the problem.

Mr. CONYERS. Then you would advocate that this particular sanction be included in any Criminal Code revision that would be reported that would cover the statute?

Mr. SENSENBRENNER. Quite definitely.

Mr. CONYERS. Would you go as far as to—would you support any stronger language, in terms of making it a crime and thus enabling Federal intervention?

Mr. SENSENBRENNER. Well, the legislation which I intend to introduce tomorrow is not as strong as Mr. Sawyer's bill, simply in response to the criticism which we heard during the last Congress consideration of parental kidnaping legislation before the subcommittee. You were the chairman at that time, and I served as a member.

Basically, the bill that I am going to be proposing tomorrow establishes Federal intervention at the last possible moment, when all else has failed. There will be a requirement that there be a willfull transportation of the child in interstate or foreign commerce; that the custodial parent notify local law enforcement shortly after the alleged abduction has taken place; and it contains several bars to prosecution when the children are returned unharmed.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you.

I note for the record that Patricia Schroeder, a distinguished member of our full committee, although not a member of the subcommittee, has joined us on the dais.

Does the lady have any questions?

Mrs. SCHROEDER. I don't have any questions, Mr. Chairman.

I would like to thank you for having these hearings.

When I got out of law school, family law was just one of the areas that I spent a lot of time in. And I don't think there's anything more painful. So it's very difficult for me to be objective in this area; and in this very difficult area of parental kidnaping.

So I compliment the chairman for having these hearings. Thank you very much.

Mr. HUGHES. Thank you very much.

Thank you, Jim, very much.

Mr. SENSENBRENNER. Thank you.

Mr. HUGHES. Your testimony has been most helpful.

[The full statement follows:]

PREPARED STATEMENT OF HON. F. JAMES SENSENBRENNER, JR.

Mr. Chairman, Mr. Sawyer, and members of the Subcommittee on Crime, I am pleased to appear before you today to address the perplexing problem of parental kidnaping that has plagued this country in recent years. During the last Congress, as a Member of this Subcommittee, I joined over 60 my colleagues in co-sponsoring a bill to address this disturbing trend. I also served as a conferee on the Conference Committee that fashioned the Parental Kidnaping Prevention Act of 1980. I would like to take this opportunity of provide you with some background on the legislative history in this area.

During our Subcommittee hearing last year, we heard disturbing testimony from various parents whose children had been snatched. One of them, in response to my questions, indicated that she and her second husband spent $30,000 on private detectives to find her child, but to no avail. Even though she was concerned about the childs' health, she was unable to get the FBI and the Justice Department to enter the case. She believed, as I do, that prompt intervention by the federal government might have made the difference in locating the child.

Shortly after that hearing, I was appointed as a conferee on the Domestic Violence Prevention and Services Act (H.R. 2977), with respect to the parental kidnapping provisions which had been included in the Senate version of the bill. The Senate provisions, which were nearly identical to the bill I co-sponsored, contained a three-prong approach by: (1) requiring, under certain circumstances patterned after the Uniform Child Custody Jurisdiction Act (UCCJA), that state courts give "full faith and credit" to the custody decisions of other states; (2) allowing access to the Social Security Administration's Parent Locator Service to locate abductors; and (3) amending the federal kidnapping statute, 18 U.S.C. § 1201, which currently exempts parental kidnappers, to permit prosecutions where the abduction violates a custody order entitled to full faith and credit under the first section of the act.

During the meeting of the conferees, I expressed strong opposition to any dilution of these criminal penalties. My primary reason for this was a fear that milder language would not provide the strong direction to the executive branch that is needed when a major change in policy is made. However, the sentiment of the conference was clearly in favor of the compromise approach. As a result, we included an expression of our intent that the Justice Department prosecute parental kidnappers under the Fugitive Felony Act, or UFAP, with the same vigor that they demonstrate with respect to other offenders who have committed state felonies and have crossed state lines. We also approved the Full Faith and Credit Provisions and Parent Locator Service.

When the Domestic Violence bill died a well-deserved death in the Senate, the interprising Senator from Wyoming, Mr. Wallop, succeeded in adding our Domestic Violence conference report provisions as an amendment to, of all things, the Pneumococcal Vaccine Bill, which was signed into law on December 28, 1980 (Public Law 96-611). Soon after its enactment, however, the problems which I had envisioned

during conference became painfully clear. My office was contacted by a determined Assistant District Attorney in Milwaukee County, Wisconsin, Christopher Foley, who will be appearing before you later this afternoon. Following exhaustive state and local efforts to locate three snatched children, they were discovered in Florida. Lack of cooperation by Florida, officials prompted Mr. Foley to contact the Justice Department for help under the Fugitive Felon Act. The issuance of a UFAP warrant by the U.S. Attorney's Office was apparently the deciding factor in the father's decision to return the children. Fortunately, this took place before the Justice Department withdrew the warrant that it had issued because, among other reasons, the U.S. Attorney failed to get the prior approval of the Criminal Division in Washington pursuant to Department Guidelines.

I firmly believe that the Justice Department will have no incentive to get serious about parental kidnaping until the Congress does so. For that reason, I am hopeful that this Subcommittee will seriously consider reporting to the full Committee the criminal provisions that eluded us last year.

Mr. HUGHES. Our first panel this afternoon consists of Dr. Doris Jonas Freed, the chairperson of the Committee on Child Custody of the Section on Family Law of the American Bar Association; and Patricia M. Hoff, director of the Child Custody Project of the National Legal Resource Center for Child Advocacy and Protection.

Both of these witnesses are appearing on behalf of the American Bar Association. Dr. Freed has been a frequent witness on this subject and, as a practitioner and commentator, has been a leader in the effort to curb child abuse.

Patricia Hoff is probably the single most knowledgeable person in the area of parental kidnaping. She is in frequent communication with all of the various activists in the field, and she is a frequent lecturer to judges, lawyers, prosecutors, and parents on the Parental Kidnaping Prevention Act, which she helped to draft while working for Senator Wallop on the Uniform Child Custody and Jurisdiction Act.

On behalf of the subcommittee, we would like to welcome you. Your statements are with us, and they will be received in the record, without objection; and you may proceed as you see fit.

Dr. Freed, why don't you start first?

TESTIMONY OF DR. DORIS JONAS FREED, CHAIRPERSON, COMMITTEE ON CHILD CUSTODY, SECTION ON FAMILY LAW, AMERICAN BAR ASSOCIATION, AND PATRICIA HOFF, DIRECTOR, CHILD CUSTODY PROJECT, NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION

Dr. FREED. Thank you.

Mr. Chairman, and members of the subcommittee, the American Bar Association appreciates greatly the opportunity to present again its views on the implementation of the Parental Kidnaping Prevention Act of 1980, sections 6 to 10, of Public Law 96-611. I will refer to the act hereafter as PKPA.

As you have noted, sir, we are here at the request of David Brink, president of the American Bar Association, to underscore the need for full and effective implementation of the new law.

My name is Doris Jonas Freed, and in addition to limiting my private practice to family law matters, I am chairperson of the American Bar Association's Family Law Section, Child Custody Committee; and also a member of the National Task Force of the ABA's Child Custody Project, of which Patricia Hoff is the director.

The Child Custody Committee of the ABA has devoted since December 1980 a substantial amount of time monitoring implementation of Public Law 96-611. In that regard, I and other members of the Child Custody Committee have lectured around the county on the PKPA, The UCCJA, The Uniform Child Custody Jurisdiction Act, and other developments in family law pertaining to child custody.

For over a decade the American Bar Association and the members of the family law section have been greatly concerned about the harmful effects that child snatching has on children.

And as you quoted, my coauthor, Professor Foster that 7 out of 10 of these snatched children are never seen again by the parent left behind.

At the request of the ABA's Family Law Section, the association's house of delegates in 1978 adopted five resolutions calling for a comprehensive solution to the problem of child snatching. On behalf of the ABA, I have appeared before your committee in the 96th Congress in strong support of the parental kidnaping prevention legislation, H.R. 1290 and S. 105.

In my testimony I referred to those resolutions, copies of which are included in the appendix of my written statement. Consistent with these resolutions, the ABA has supported enactment of the PKPA.

As enacted, the PKPA requires: one, appropriate authorities in every State to enforce, and not modify, custody determinations made by sister State courts in a manner consistent with certain jurisdictional criteria; two, the act authorizes the Federal Parent Locator Service to locate children in connection with both civil and criminal child custody proceedings; and three, the act expressly declares the congressional intent that the Fugitive Felon Act apply to cases involving parental interstate or international kidnaping restraint, and flight to avoid prosecution under applicable State felony statutes.

The so-called full faith and credit section does not require a response on the part of any Federal agency. Rather, counsel must raise section 8 of Public Law 96-611, 28 U.S.C. 1738A, in pleadings presented to the State court in which the custody proceeding is pending in order to compel or to resist recognition and enforcement of a custody determination made by another court.

Consideration of any substantive amendment to the PKPA should be deferred until a sufficient number of cases applying the Federal law are available for study. There have been very few at this point.

The second major section of the law requires the Secretary of the Department of Health and Human Services to enter into agreements with States desiring to use the Federal Parent Locator Service to locate children and their parents in connection with custody proceedings and/or criminal prosecution of child abduction and restraint; and to prescribe in regulations the procedures for State transmittal of location requests. Such requests cannot be made by an individual.

However, to date neither the agreement nor the regulations have been finalized by the Federal Locator Service and the States and

the parents whose children have been snatched are anxiously awaiting this finalization.

From the Federal Register of September 1, there is an indication that the Office of Management and Budget is currently reviewing the forms which may be used by State child support enforcement agencies to request help in locating kidnaped children.

Further delay in the implementation of this section denies to these parents an important tool for locating their children, thus prolonging in many cases the separation of these parents from their children, and doing, heaven knows what harm is inflicted on the children in the meantime.

We urge, therefore, that this implementation of the PLS provision of the new law take place as soon as possible.

I have had numerous calls, telegrams and letters from attorneys and from parents throughout the country. Here is what they said:

> We heard you, Dr. Freed, say on television; we've heard you on radio; we've read you quoted in the newspapers, that now that this new act is in effect things are going to be vastly improved. With the threat of the FBI coming into the picture, there should be less child kidnaping on the part of parents.

Then they said to me, "What's happened?"

I had to tell them that at this point, the FBI and the Department of Justice seem to be "dragging their feet."

Additionally, I had to say that, "I have been advised in a recent report that the Department of Justice is still maintaining their former 'hands-off' policy as to what they call 'family fight'."

They also said to me, "We must prove by some reliable source that our snatched children are in physical or emotional danger. How can we prove this? We haven't seen them for weeks or months. We don't know where they are. How can we prove it? But we imagine they are not in either good physical or emotional shape."

Sir, I urge that this apparently flagrant disregard of the congressional mandate by the Department of Justice be changed. And in that regard, I should like to quote section 4 of the American Bar Association's resolution:

> Be it resolved, that the American Bar Association recommends that upon occurrence of a snatching of a child, and a request for assistance and relief by the custodial parent from whom the child was removed.

Or detained.

> The Department, of Health, Education and Welfare, the State Department, the Justice Department, and any other federal and/or state agencies who can provide immediate assistance, make their existing resources available to such parent, and provide such assistance as is available for the location and apprehension of the child.

There is the congressional mandate that there be reporting by the Department of Justice 120 days after the effective date of the act what they have done, and how many reports they have received as to snatched children.

I should like not only to urge that the Department of Justice's present view be changed, but that it be changed immediately to save the future and the lives of these 100,000 snatched children.

Mr. HUGHES. Dr. Freed, the report you have mentioned has been received by the committee and, without objection, will be made a part of the record.

Hearing none, so ordered.

[Report appears at p. 171.]

Mr. HUGHES. Ms. Hoff, we have your statement, and if you could perhaps summarize it?

Dr. FREED. May I be excused, sir?

Mr. HUGHES. Well, if you would hold just a second, one of our parents may want to question you about your statement.

Dr. FREED. I wonder if I could receive any questions at this point, because I am on my way to Rochester, N.Y., to lecture on this same subject. So I would be glad to answer any questions.

Mr. HUGHES. The gentleman from Michigan?

Mr. SAYWER. I have no questions.

Mr. HUGHES. The gentleman from Wisconsin?

Mr. KASTENMEIER. Just one or two questions.

Because you have been so deeply involved in this question I assume you are our source of expertise on it. I don't precisely recall the passage of the act last year, and I am wondering if you know why Congress did what it did? That is to say, among other things, declare the intent of Congress as to the Fugitive Felon Act, rather than expressly making it a part of the act?

Why do we have a declaration of intention as to an act rather than making it a part of the act directly?

Dr. FREED. According to the Department of Justice, it hesitated labeling loving parents as criminals.

Personally, I doubt that loving parents snatch children. The majority probably do it for spite or revenge against the other spouse. I made the comment that I believe that what the Department of Justice is doing is blatantly in disregard of the congressional mandate, that its intent should be carried out. What this portion of the act adds is that not only should this be carried out, but that the Department of Justice render regular reports, stating:

One, how many requests did you get? Two, what has been your record as far as these requests are concerned?

I believe that putting the two elements together, sir, that it is in reality a congressional mandate.

Mr. KASTENMEIER. Thank you.

I take it that your admonition to us which referred to amending the first section you referred to—the requirement that appropriate authorities in States enforce custody determinations made by sister States—I take it, it is because of the principles of federalism and other questions that may arise, that a clear determination has not been made as to how effective this is as a mandate?

Dr. FREED. Not exactly, sir, but again you are generally correct. The States, themselves, must have made this offense a felony before the State prosecutor requests the Department of Justice, through the FBI, to assist in locating the snatched children; and, furthermore, the State prosecutor must evidence his or her immediate and present intent to prosecute once the State gets hold of the children and the parent who is guilty of the snatching. But I was not referring to this.

Mr. KASTENMEIER. I take it that the full implementation of this is being contested in the courts, and that until these cases are resolved—your advice was we defer further statutory changes, until we are illuminated by these decisions; is that right?

Dr. FREED. Yes, sir, I directed my comments in that direction only toward the full faith and credit provision mandated by the PKPA, and by the UCCJA. We need to be sure that they will be construed together. I believe that we've had very few cases—in my State of New York, we have had about three; there have been a couple from California that I know of. How the PKPA and the UCCJA will be implemented, and how they will be used to complement one another, and not held to contradict each other, must await further State court decisions.

Mr. KASTENMEIER. Thank you, gentlemen, for your indulgence.

Thank you, Mr. Chairman.

Mr. HUGHES. Thank you.

Mr. Conyers?

Mr. CONYERS. I really congratulate the witness for her statement. I remember her from another session of Congress.

Dr. FREED. Thank you, sir.

Mr. HUGHES. Doctor, just by way of further clarification, I understand you support, and the American Bar Association, supports the creation of a separate Federal offense for parental kidnaping?

Dr. FREED. If you will review, again, the five resolutions, they have not in so many words urged that childnaping be a Federal crime.

However, what they are asking for—I don't want to repeat myself—is for the FBI and the Department of Justice get into the problem with both feet.

They have also gone a little further, as you will see in Resolution No. 5—may I read it?

> The American Bar Association urges the United States Congress, in treaties, and the State legislatures, in statutes, to take appropriate measures to provide in extradition treaties and statutes that the removal of a child from a custodial parent, in violation of an existing court decree, to another state or country, be construed as an extraditable act.

We have not talked about that issue today, and I wanted to add that, sir.

Mr. HUGHES. What if the Justice Department continues to, as you have indicated, "drag its feet"?

Dr. FREED. Well, I think——

Mr. HUGHES. I don't know how anybody can read the language in the conference report any differently than we read it, which is a clear mandate that we want the Justice Department to treat child kidnaping as it does in any other felony case under the Felony Fugitive Act.

Now, what if the Justice Department continues to ignore what is a clear congressional mandate? Has that been discussed by the American Bar Association?

Dr. FREED. Well, respectfully, I would like to submit the following, sir:

That the provision requiring the Justice Department to provide reports of their activity, of how many cases have been reported to them, of what action they have taken—I respectfully submit—would be a completely superfluous provision were it not intended that they were to act in these cases of child snatching.

I would like to add one more thing:

It has been remarked and discussed for a great deal of time throughout the country that "loving parents" do the snatching. As I have said, I doubt this.

Perhaps there should be aides to the court, such as experts and spokespersons for the child so that both parents will have an input as to where the child custody should lie; and that both parents have a share in that child's life.

I have never heard from any source that a parent satisfied with the child custody determination, snatches his or her child.

Now, maybe that is a roundabout way of answering you, but that is my personal feeling.

Mr. HUGHES. But we do have to get them back before the court that has jurisdiction.

Dr. FREED. Certainly we do, and the FBI's active aid will be of a great importance. That raises another point I want to stress: that a custodial parent cannot possibly prove that the child is in physical or emotional danger; because—not knowing where the child is, nor knowing any of the circumstances, the parent is helpless.

Mr. HUGHES. Thank you very much, Doctor.

Dr. FREED. Thank you, sir.

Mr. HUGHES. Ms. Hoff.

Ms. HOFF. Mr. Chairman, and members of the panel, at the risk of repeating some of what has been articulated heretofore I would like to spend a few minutes summarizing the position of the Department of Justice with respect to the application of the Fugitive Felon Act to parental kidnaping cases both before and after the Parental Kidnaping Prevention Act was passed. After tracing this evolution, which unfortunately does not evidence any change whatsoever, I will then propose certain specific steps that I believe the Department could take to better respond to the intent, language, and the spirit of that law.

I am testifying today in my capacity as director of the American Bar Association's Child Custody Project. It is a 2-year project that has been undertaken through a cooperative agreement with the Children's Bureau of the Department of Health and Human Services. We are just about completing our first year. During the course of the year we have had extensive consultations with parents, prosecutors, private attorneys, and many legislators—and their staff—at the State and Federal levels with respect both to this act and related laws.

Prior to joining the project, I was on the staff of the Senate Judiciary Committee, where I was minority counsel to the Subcommittee on Improvements in Judicial Machinery, and subsequently served as legislative assistant to Senator Malcolm Wallop, where I helped in the development of the PKPA.

One way to approach this most important topic, the implementation by the Justice Department of section 10 of Public Law 96-611, is by responding to the following question: Why did Congress enact this provision, when the plain language of the Fugitive Felon Statute, title 18, United States Code, section 1073, already expressly applied to all State felony charges?

Hearings in both Houses revealed that the Justice Department inferred from the parental exemption in the Federal kidnaping statute, the Lindbergh law, an intent on the part of Congress that

the Fugitive Felon Act, although general in its terms, should not be applied in State felony parental kidnaping cases.

With the enactment of the PKPA, Congress explicitly rejected the Department's rationale for noninvolvement in parental kidnaping cases: The parental exemption in the Lindbergh law did not carry over to fugitive felon cases. I believe that Congress saw the declaration of its intent, as set forth in section 10 of the new law, as a means of bringing the Department into State parental kidnaping cases by providing assistance to the States in the form of investigations of those interstate or international flight cases where the whereabouts of the child was unknown. In the absence of the abductor, it was impossible for the prosecutor to actually undertake a parental kidnaping prosecution, since that defendant's whereabouts were not known.

In short, section 10 of the PKPA reflects congressional opinion that the Fugitive Felon Act should provide one means whereby Federal investigative assistance can be made available, short of actual Federal prosecution.

Backing up a bit, the mechanics of the Fugitive Felon Act warrant brief explanation. Upon a showing that a State felony has been committed, and that the State prosecutor intends to prosecute upon extradition of the fugitive, a U.S. attorney can issue a fugitive felon "UFAP" warrant. Once the warrant is issued the FBI will investigate the case. Once the suspect is apprehended by Federal agents he or she is turned over to State authorities to wait extradition pursuant to State procedure. It is then that the Federal charges are dismissed. So you see, the difference between creating new Federal parental kidnaping offense and applying the Fugitive Felon Act, is that by applying the Fugitive Felon Act, you are involving the FBI in investigation, but leaving the primary responsibility for prosecution to the States, to the State prosecutors, who are determined to prosecute particular cases. The initial decision with respect to whether or not prosecution should go forward is made at the State level pursuant to State law.

Before the law passed, the Justice Department had created an exception for parental kidnaping cases. The guidelines in the United States Attorneys' Manual reflected this exception. Prior to the passage of the act, the Fugitive Felon Act was available in rare instances, only where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

The language in the domestic violence conference report made quite clear that the conferees and the rest of the Congress specifically rejected these restrictive standards, because their application led to very infrequent FBI involvement in interstate child snatching cases.

Nevertheless, 3 days after the law was passed, the Criminal Division of the Department promulgated a new set of guidelines. I use the term "new" rather loosely, because on careful examination it became obvious that although new words were used, their effect was substantially the same as it had been before the law was passed.

Applying the revised terminology, a UFAP warrant would only issue where there was independent credible information establishing that the child is in physical danger or is being seriously abused or seriously neglected. After Congress had specifically rejected the unique criteria which were being applied to parental kidnaping cases, lo and behold, the new guidelines continued to apply unique standards.

The effect of these restrictive standards was the subject of the statutorily required report which was submitted to Congress by the Attorney General on June 26; I believe a copy has already been made a part of the record. Of the approximately 75 cases that came to the attention of the Department—regrettably the source of requests for FBI intervention was not particularized in this report—the Department claimed that only 24 met the requirements—I query whether they meant the statutory requirements or their own guideline requirements. Of those 24, only 6 fugitive felon warrants were issued. Prior to the act being passed we were told in congressional hearings that about five UFAP warrants were issued annually for parental kidnaping cases. So there evidently was not a major change in policy. The Attorney General's report also noted a further revision in their guidelines. These current guidelines, as reflected in that report, require, as a condition precedent to the issuance of the UFAP warrant, independent credible information that the child is in physical danger or is then in a condition of abuse or neglect. In addition, the Department requires prior approval from the Criminal Division in Washington before a U.S. attorney's decision to issue a UFAP warrant may be acted upon.

That is also unique, as far as I know. To the best of my knowledge in no instance is a U.S. attorney's decision with respect to issuing a UFAP warrant subject to review in Washington. From a practical standpoint, this prior approval process means that time passes before a U.S. attorney's initial decision is actually reviewed and ruled upon in Washington. And as time is passing, the ultimate decisionmaking is removed from the U.S. attorney who is closest to the facts at hand, who is capable of determining whether or not the prosecutor means to prosecute, and who can best assess whether or not the prosecutor is intent on extraditing. Since the Criminal Division in Washington is making the final review, clearly, time and effort at the U.S. attorney's level is being wasted.

I would note that cases have been reported to me where a U.S. attorney's decision to issue a warrant, based upon the full and appropriate showings of the State prosecutor, has been reversed in Washington.

At this point, I would like to discuss some of the problems inherent in these current policies. It has been mentioned by my colleague, Dr. Freed, that the parents who are required to show credible information that the child is being abused or neglected or is in danger are presented with a hopeless "Catch-22". If they know where the fugitive parent is, recourse to the Federal authorities is generally unnecessary. If the whereabouts of the parent is not known, it would be virtually impossible to provide credible information as to the child's condition. Moreover, since the FBI would only be involved pursuant to the Fugitive Felon Act when the whereabouts of the suspect are not known, it is clear that the pros-

ecutors and parents would not request this sort of assistance if they knew where the child and the party were.

One of the other problems, or one of the effects of the Department's current guidelines, is that prosecutors remain without a remedy. This law sent a signal to prosecutors who were desirous of prosecuting interstate child snatching cases that they could turn to the FBI for investigative assistance. These prosecutors have found themselves without that remedy, and they have wondered aloud about the value of this law as it is being interpreted and applied by the Justice Department.

You will hear from prosecutors who can certainly describe that in a better manner than I can.

One last thought with respect to the requirements contained in the guidelines. By requiring a showing of abuse, or neglect, or danger, certainly with respect to the former two, the Department, in my opinion, is essentially changing the character of the offense that must underlie the request for a UFAP warrant, as required by the law.

They are essentially saying, we will issue these warrants in cases of child abuse and child neglect. But that is not what the Congress said when it passed the law. The Congress said that these warrants should issue in cases of parental kidnaping involving flight to avoid prosecution.

I query whether or not they have distorted the plain language, if not clear intent, of the law?

I would like at this point to suggest some specific changes that I think would bring the Department into compliance with the plain language of the law.

First, it would be my recommendation that the guidelines which establish these rigid requirements of independent, credible evidence of danger, abuse, or neglect, be completely eliminated from the U.S. attorneys' manual, and from any similar documents which are in the possession of the FBI.

I would suggest that the discretion of the U.S. attorneys be relied upon to make the decision as to whether or not a warrant should issue and that that should be done upon application of the State prosecutor.

I would note, when one considers the time that is expended in this Washington review, I think all would agree that the resources and the manpower allocated to that effort might be much more constructively applied to actual FBI investigation of cases. Who knows, in the 3 or 4 months that it takes to review an application in Washington, more than one child may well be found.

The report that was submitted on June 26 gives us only vague information as to the applications that have been received. It would be more helpful if the Department specifically indicated where, by State, the applications originated. That would immediately indicate whether or not there is a felony offense which would trigger the application of the Fugitive Felon Act. Thirty-nine States currently classify child restraint or child abduction as felonies. Therefore, if the application came in from California, for example, one would know immediately that, at least, the State statutory requirement had been met.

Additionally, I would suggest that it is critical to know who the applicant is. The FBI is completely correct in declining to act upon applications filed by parents. The FPKA envisions a Federal-State law enforcement team effort in which the prosecutor, not the parent, must be the initiating party. So a parent who walks into an FBI office is not the appropriate source to initiate the Federal response. It might better be suggested that that party go and talk either to his or her counsel, or directly with the State prosecutor; for it is the latter person's judgment that triggers the entire process.

Finally I would note that shortly after the Federal law was passed, at least two States upgraded the penalties in their statutes to enable their prosecutors to seek FBI assistance in difficult interstate parental kidnaping cases where the NCIC and other investigative efforts were simply insufficient.

I would conclude by saying, we have a new law; it is a compromise view reached after several years of consideration by Congress. I ask this committee to do whatever it can to bring about the implementation of the currrent law, at the same time that it may be considering—and with good cause—additional legislation.

I don't think we can turn our backs on the parents, on the many, many children, and on law enforcement officials that look to the new law, and look to a new attitude on the part of the Department of Justice, and who have become extremely cynical. I don't think we can permit that cynicism to continue.

I believe that the steps that I have mentioned, if undertaken and carried out by the Department, might bring about a better result for the time being.

Thank you.

Mr. HUGHES. Thank you very much.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I remember this witness testifying.

Counsel, is there a law that can be brought against those who don't enforce the law properly?

Ms. HOFF. It's a very interesting question, one which I have had posed to me by private counsel. I have had occasion to do very limited research to reply to these lawyers.

Clearly, prosecutors have discretion; that is the rule of thumb. Nevertheless, where there has been abuse of this prosecutorial discretion, or where there has been a systematic prosecutorial nonfeasance or failure to conform to statutory mandate, one may sue to redeem the abuse of discretion or one may seek mandamus to compel a certain activity.

While that remedy may exist as a possibility, it is not one that your average aggrieved party can indulge in, since in the typical case the left-behind parent is of average means, whose resources must be considered for the custody litigation or detective work. Therefore, I think it is more theoretical than real. Although I would note that several cases have been successfully litigated by plaintiff women in situations involving police and prosecutorial nonfeasance in connection with domestic violence statutes. These cases are described at page 1072 of the February 1981 issue of the Clearing House Review.

Mr. CONYERS. Are there any cases in which the administrative guidelines of the Department of Justice have been challenged?

Ms. HOFF. I am not aware of any specifically, or if there are any.

Mr. CONYERS. What if the Attorney General of the United States was to call in the assistant State attorneys general and have a conference in which they worked out an understanding of this matter?

Ms. HOFF. It would be very desirable to see that kind of cooperation, that spirit of cooperation, provided it extended beyond the conference.

I would note that on Tuesday of this week, Christopher Foley, assistant district attorney for Milwaukee county and I jointly presented a program on the investigation and prosecution of child kidnaping cases to a group of 30 or 40 prosecutors. The threshold problem is in interesting these criminal justice system officials in child snatching cases. We found, much to our happy surprise, that many prosecutors there were extremely interested. It's a sort of circular situation: if you don't have information on or experience, with child snatching cases, you shy away; and as soon as you have some experience you are less reluctant to get into these cases.

Mr. CONYERS. The present Attorney General has not refused to do this, has he?

Ms. HOFF. I don't believe that he has been requested to do precisely that. It could only assist in the effort to prevent parental kidnaping. Convening such a conference would send a clear signal that these laws, Federal and State, will be enforced. If they served their ultimate purpose of deterrence, we would not have to be here today.

Mr. CONYERS. Would more personnel be required in the FBI?

Ms. HOFF. It is hard to say because unless and until the Department takes a vigorous law enforcement stance, you as a committee will not have any firm data to assess how many cases, literally, fall within the definition of the PKPA. You as a committee will not be able to evaluate just what is involved from a funding standpoint or a manpower standpoint.

And, in point of fact, the Department will remain in the posture of merely predicting what the volume of cases will be, until they have spent, let's say, a 12-month period applying the law to its fullest extent. That was the purpose of the statutorily required report, to inform you of what the actual effect of the law has been on the Department and on the public.

Mr. CONYERS. Well, would the guidelines that you say until you know where the kid is, because the local prosecutor should get in touch with the prosecutor in that State and go through a normal extradition proceeding. And if they won't do anything unless you can prove that the child is in danger or being abused or something of that sort, then this is obviously impossible.

And certainly when William French Smith signs a report letter that he signed, he either didn't read it, or he knew he was just saying catch-22, in effect, to the act.

Now, I may not be able to stay because of a prior commitment, but I am going to be interested in reading the responses of the Department of Justice. Frankly, I am rather startled to see their handling of that. And I think it extremely cavalier to say the least.

I yield back my time.

Mr. HUGHES. Ms. Hoff, we have been contacted by a number of witnesses, victims of parental kidnaping, who have been to the FBI and told—I think properly—they have to go to the nearest law enforcement agency.

We also have been contacted by a number of others who say they weren't given any particular direction as to where to go. Do you find that that is a problem, that the victims are not getting directed by the authorities as to the procedures that are available to them?

Ms. HOFF. I think that is probably true in many communities throughout the country. A few communities have had outstanding cases where there has been a great deal of interest and media attention. In those areas I believe that there probably has been a considerable effort to provide direction to other victims of parental kidnaping. In the majority of communities nationwide, however, authorities simply do not know fully what to recommend. I think that is true of many other situations.

In my present capacity as director of the custody project, I receive at least 10 to 15 parental inquiries each week. Commonly asked questions include: "Where do I go in the civil process?" "What do I do?" " Where does the criminal process enter into this scenario?" "How do I interest the criminal authorities in my particular case?"

Based upon my experience over the last 10 months or so with the project, it is clear that there isn't a sufficient body of information available throughout the country to guide these people.

Mr. HUGHES. Do you agree that the Department of Justice should make known the facts, that they will investigate parental kidnaping cases that meet the criteria?

Ms. HOFF. If you delete the latter part of your question—"that meet the criteria"—I would say very definitely, yes; because I believe that many parents who abduct their children or restrain their children, do so because they feel there will be no action taken against them whatsoever.

If it is made quite clear that parental kidnapings will be prosecuted by the State and that the FBI will become involved in investigations pursuant to section 10 of Public Law 96-611, I think we would see a very significant and positive impact in the reduction of the number of cases.

Mr. HUGHES. There has to be some criteria. What do you see as the minimum nonstatutory criteria that are appropriate?

Ms. HOFF. I would note that in every other kind of State felony charge, to my knowledge, the determination as to whether or not a UFAP warrant will issue, is dependent upon a showing by the prosecution of two things.

One, the State prosecutor must show that there is an intent to extradite upon the apprehension by the FBI of the suspect;

Two, the prosecutor must show the prosecution will go forward pursuant to State law upon the return of the suspect.

The UFAP statute itself is quite general. The language of the statute applies to all felony charges. With the enactment of the PKPA, which was intended to treat State felony parental kidnapings in the same exact manner as all other felonies, I believe that

the criteria, if any, should be identical to those that apply to any other State felonies.

Mr. HUGHES. I understand those are the criteria. Obviously there have been a lot of parental kidnaping complaints coming directly to the FBI where there hasn't been State prosecution.

Ms. HOFF. Are you speaking of special, preferential treatment or merely that they be treated as all other State felonies?

Mr. HUGHES. As with any other felony case.

There is another catch-22 situation involving parental kidnaping relative to interstate flight. One of the requirements of Justice is that there be some showing where the abducting parent and child are; and often the parent doesn't know where they are.

Ms. HOFF. That is a problem. I don't think that that one is as insurmountable as the need to show harm, abuse or neglect; because if, for example, a parent has relatives or connections or the possibility of employment in another State, or if the absconding parent's friends, family, relatives, or employers in the home State have not been contacted, or you have not elicited any information which leads you to believe that the abductor has remained in the State, I believe after the passage of a short period of time, it is usually fairly straightforward to establish that the party has left the State. I do not mean to leave the impression that it is easy, but merely easier than showing abuse or neglect.

Mr. HUGHES. And I think parenthetically I agree: the Justice Department has in fact created a different crime altogether, child abuse, as opposed to parental kidnaping. They are altogether different.

Ms. HOFF. Quite clearly cases of child neglect and abuse warrant the attention of law enforcement authorities. But that does not mean that the Department should be allowed to convert a parental kidnaping into a child abuse or child neglect case for purposes of authorizing FBI investigations under the Fugitive Felon Act.

Mr. HUGHES. I have the conference report before me. I note that the conference report cites U.S. attorneys' manual. The Department's rationale is illogical. Obviously they have not read that conference report.

Ms. HOFF. They will have to speak for themselves on that point——

Mr. HUGHES. They will.

Ms. HOFF. I believe in the course of development of that language the Department was consulted, and therefore was privy to its evolution and its enactment.

Mr. HUGHES. Well, thank you; it has been very helpful.

Ms. HOFF. Thank you very much.

[The complete statement follows:]

PREPARED STATEMENT OF DORIS JONAS FREED, CHAIRPERSON, COMMITTEE ON CHILD CUSTODY SECTION OF FAMILY LAW AND PATRICIA M. HOFF, DIRECTOR, CHILD CUSTODY PROJECT, NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION

Mr. Chairman and Members of the Subcommittee, the American Bar Association appreciates the opportunity to present its views on the implementation of the Parental Kidnaping Prevention Act of 1980, Sections 6-10 of P.L. 96-611. We are here at the request of David Brink, President of the American Bar Association, to underscore the need for full and effective implementation of the new law.

My name is Dr. Doris Jonas Freed, I am Chairperson of the ABA's Family Law Section's Child Custody Committee and a member of the National Task Force of the ABA's Child Custody Project. The Child Custody Committee has devoted since December, 1980, a substantial amount of time monitoring implementation of Public Law 96-611. In that regard, I and other members of the Child Custody Committee have lectured around the country on the PKPA and other developments in family law.

With me is Patricia Hoff, Director of the ABA's Child Custody Project. Ms. Hoff will discuss with you her project at the conclusion of my statement.

For over a decade, the ABA and the members of the Family Law Section have been concerned about the harmful effects that child snatching has on children. At the request of the ABA's Family Law Section, the Association's House of Delegates in 1978 adopted five resolutions calling for a comprehensive solution to the problem of child snatching. On behalf of the ABA, I appeared before your Committee in the 96th Congress in strong support of the then parental kidnapping prevention legislation, H.R. 1290 and S. 105. In my testimony,[1] I referred at some length to these resolutions, copies of which are included in the appendix of this statement. Consistent with these resolutions, the ABA supported enactment of the Parental Kidnaping Prevention Act of 1980.

As enacted, the Parental Kidnaping Prevention Act of 1980, hereinafter referred to as the "PKPA", (1) requires appropriate authorities in every state to enforce, and not modify, custody determinations made by sister state courts in a manner consistent with the jurisdictional criteria contained in the federal law, (2) authorizes the Federal Parent Locator Service to locate children in connection with civil and criminal child custody proceedings, and (3) expressly declares as the intent of Congress that the Fugitive Felon Act apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable State felony statutes.

Unlike the latter two provisions, the so-called "Full Faith and Credit" section does not require a response on the part of any federal agency. Rather, counsel must raise Section 8 of Public Law 96-611, 28 U.S.C. 1738A, in pleadings presented to the state court in which the custody proceeding is pending in order to compel (or resist) recognition and enforcement of a custody determination made by another court. Since the law is still relatively new, only a few cases have been decided involving this section. Therefore, consideration of substantive amendments to this section, if any, should be deferred until a sufficient number of cases applying the federal law are available for study.

The second major section of the law requires the Secretary of the Department of Health and Human Services to enter into agreements with states desiring to use the Federal Parent Locator Service (hereinafter "FPLS") to locate children and their parents in connection with custody proceeding and/or criminal prosecutions of child abduction and restraint, and to prescribe in regulations the procedure for state transmittal of location requests. To date, neither the agreement nor the regulations have been finalized by the Administration. However, we note with guarded optimism an entry at page 46247 of the September 27, 1981 Federal Register which indicates that the Office of Management and Budget is currently reviewing the forms which will be used by state child support enforcement agencies to request information to locate children in parental kidnapping or child custody cases. The Child Custody Project and the members of the ABA's Child Custody Committee have been contacted by numerous parents throughout the country who are keenly interested in using the FPLS to locate their missing children. Further delay in the implementation of this section denies these parents an important tool for locating their children, thus prolonging in many cases the separation of these parents from their children. We urge that the implementation of the Parent Locator Service provision of the new law take place as soon as possible.

Implementation by the Department of Justice of the third provision of the PKPA has not taken place. This has resulted in frustration and concern on the part of attorneys and parents.

Ms. Hoff will now present her portion of this statement. In her statement, she will summarize the development of section 10 of the law and this should put the current position of the Department into some meaningful prospective.

I am Patricia Hoff, Director of the ABA's Child Custody Project. The Child Custody Project was established last December, pursuant to a two-year cooperative agreement with the Children's Bureau of the Department of Health and Human Services,

[1] House Judiciary Subcommittee on Crime, hearing on H.R. 1290 and other related bills pertaining to "parental kidnaping," June 24, 1980.

to foster effective implementation of the laws applicable to interstate and international child custody disputes, including cases of child snatching. With the assistance of a task force of experts in the areas of family law and child psychology, I conduct training seminars and workshops for judges, lawyers, prosecutors, police and parents on the Uniform Child Custody Jurisdiction Act, the Parental Kidnaping Prevention Act and related laws, and I am currently developing instructional materials so that the educational component of the program can continue beyond the Project's completion date. A more complete description of the Project's activities is included in an appendix to this statement. Prior to joining the Child Custody Project, I served from 1977-79 as Minority Counsel to the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, and from 1979-80 as a legislative assistant on the staff of Senator Malcolm Wallop. While working in Senator Wallop's office, I assisted in the development of the PKPA, and served as Congressional Advisor to the Hague Convention on the Civil Aspects of International Child Abduction.

As Dr. Freed has stated, section 10 of the PKPA has not been implemented by the Justice Department. The section was developed as follows. After debating the merits of enacting a new federal parental kidnapping/child restraint offense as contained in S. 105 and H.R. 1290, Congress instead decided to include a provision in Public Law 96-611 to clarify any ambiguity that may have existed as to whether the Fugitive Felon Act was intended to cover state felony parental kidnapping cases involving flight. Section 10 of the new law makes clear that the Fugitive Felon statute, 18 U.S.C. 1073, is applicable in state felony parental kidnapping cases involving interstate or international flight to avoid prosecution.

The section was inserted in light of the Justice Department's policy of rare intervention in child abduction cases. Such policy was apparently based upon the exemption of parents from the federal kidnapping statute, 18 U.S.C. 1201, from which the Department inferred that Congress intended to limit the application of the Fugitive Felon Act in cases of parental kidnapping. This restrictive reading of the Fugitive Felon Act was reflected in guidelines contained in the U.S. Attorney's Manual which conditioned issuance of warrants on the existence of "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent." The application of these criteria resulted in the issuance of only a handful of Unlawful Flight to Avoid Prosecution (hereinafter "UFAP") warrants, the effect of which was infrequent F.B.I. investigation of state felony parental kidnapping cases.

In enacting Public Law 96-611, Congress rejected the Justice Department's standards for the issuance of fugitive complaints because those standards treated parental kidnapping cases differently from all other felony offenses, and specifically directed the Department to handle parental kidnapping in the same manner as any other state felony. See, Conference Report on H.R. 2977, the Domestic Violence Prevention and Services Act, House Report No. 96-1401 at 41-43. Implementation of the Act would make the F.B.I. available to investigate those parental kidnapping cases in which the abductor parent has fled from the jurisdiction to an undisclosed location, or has wrongfully restrained the child in another jurisdiction, thereby frustrating the ability of the state prosecutor to pursue the fugitive across state lines or to prosecute the underlying criminal offense.

On December 31, 1980, three days after the PKPA was signed into law, the Criminal Division of the Justice Department issued revised guidelines to implement the Fugitive Felon section of the new law. The new guidelines amounted to little more than a reformulation of the pre-PKPA policy; under the new policy, the Criminal Division required "independent credible information establishing that the child is in physical danger or is being seriously abused or seriously neglected." Then, on June 26, 1981, the Attorney General, as required by Public Law 96-611, submitted his first report to Congress on the implementation of section 10. This report contains a further revision in Department guidelines with respect to the issuance of UFAP warrants in state felony parental kidnapping cases. These new guidelines continue to require as a condition precedent to the issuance of Fugitive Felon warrants "independent credible information that the child is in physical danger or is then in a condition of abuse or neglect." Additionally, prior approval must be obtained from the Justice Department in Washington before a U.S. Attorney can issue a fugitive complaint.

What the Justice Department has done does not carry out the requirements of section 10 of the new law. The policy contravenes both the letter and spirit of the PKPA, which was to provide meaningful federal investigative assistance in those state felony cases which the state was intent on prosecuting. Consequently, state prosecutors are in no better position today than they were before the law was passed, i.e., unable to obtain UFAP warrants and F.B.I. investigation of felony ab-

duction and restraint cases. Moreover, the requirements established by the Department present a hopeless Catch-22 for those complainant-parents who do not know the whereabouts of their abducted children and, therefore, cannot provide the requisite "credible information that the child is in physical danger or is then in a condition of abuse or neglect."

Both Dr. Freed and I have talked to numerous parents, prosecutors and lawyers who are seriously concerned by the failure of the Justice Department to conform to the clear directive of the new law. Cases have been reported to us wherein applications for federal complaints have been denied before and after the enactment of the PKPA for identical reasons, namely, for failure to satisfy the special criteria enumerated by the Department. Prosecutors have related their repeated, unsuccessful attempts to obtain UFAP warrants.

In order for the Act to be implemented, I believe that the Justice Department must eliminate from the guidelines for the issuance of UFAP warrants the requirement of independent credible evidence of danger, abuse or neglect. Once interstate or international flight has been established, the local prosecutor's judgment as to whether a parental kidnaping offense has been committed within the meaning of the state law, should be deemed sufficient to obtain a federal warrant without additional proof.

Second, the requirement of prior approval of warrant applications by the Criminal Division in Washington should be eliminated because this double scrutiny is inefficient and duplicative of the application reviews done by U.S. Attorneys throughout the country. The time and money spent reviewing applications previously approved by U.S. Attorneys would be far more productive if allocated to the actual investigation of the case by the F.B.I. Third, the statutorily-required reports prepared by the Department should indicate the source of the application (e.g., whether from a prosecutor, parent or attorney), and the state in which the application is made. Since only those applications submitted by prosecutors in states having felony parental kidnaping or restraint laws can activate the issuance of UFAP warrants, a report identifying both the source and state of application would facilitate future oversight by the Committee on the implementation of this section of the law.

I might note at this point that 39 states now have felony parental kidnaping and/or restraint laws. Two of these—New York and Hawaii—upgraded the penalties in their statutes specifically to avail themselves of F.B.I. investigative assistance pursuant to the PKPA. A recent Child Custody Project survey of state criminal child abduction and restraint laws is included in an appendix to this statement.

To conclude, the American Bar Association commends this Committee for holding this important oversight hearing on the implementation of the Parental Kidnaping Prevention Act. We thank you for permitting us to present these views.

APPENDIX I

RESOLUTION OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION, ADOPTED AUGUST, 1978

I

Be It Resolved, That the American Bar Association encourages the legislatures of the various states which have not yet adopted the Uniform Child Custody Jurisdiction Act to do so at the earliest opportunity.

II

Be It Resolved, That the American Bar Association urges the Congress of the United States to enact legislation which would require the courts of the states to accord full faith and credit to the child custody and visitation decrees of each state, pursuant to Article IV, Section 1, of the United States Constitution.

III

Be It Resolved, That the American Bar Association supports the child snatching provisions set forth in S. 1437, the "Criminal Code Reform Act of 1978," as passed by the U.S. Senate on January 30, 1978.

IV

Be It Resolved, That the American Bar Association recommends that upon occurrence of a snatching of a child, and a request for assistance and relief by the custodial parent from whom said child was removed, the Department of Health, Education and Welfare, the State Department, the Justice Department, and any other federal and/or state agencies who can provide immediate assistance, make their existing resources available to such parent, and provide such assistance as is available for the location and apprehension of the child.

V

Be It Resolved, That the American Bar Association urges the United States Congress, in treaties, and the State legislatures, in statutes, to take appropriate measures to provide in extradition treaties and statutes that the removal of a child from a custodial parent, in violation of an existing court decree, to another state or country, be construed as an extraditable act.

APPENDIX II

AMERICAN BAR ASSOCIATION

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NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY & PROTECTION
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Josephine Bulkley
ASSISTANT DIRECTOR CHILD CUSTODY PROJECT
Patricia M. Hoff

CHILD CUSTODY PROJECT

The Children's Bureau of the Department of Health and Human Services selected the American Bar Association's National Legal Resource Center for Child Advocacy and Protection to conduct a two-year public education program on the Uniform Child Custody Jurisdiction Act and to encourage its nationwide adoption. The "Child Custody Project" began in December, 1980 as a joint activity of the Family Law Section and Young Lawyers Division of the ABA, with direct administration and guidance provided by the Resource Center.

For the most part, the Child Custody Project's activities fall into four goal-oriented categories:

1. Public Education -- conducting educational programs for lawyers, judges, criminal justice system personnel and parents on state, federal and international laws governing child custody disputes, including the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act;

2. Legislation -- promoting enactment of the UCCJA in non-enacting jurisdictions;

3. Government Responsiveness -- evaluating legal, judicial and governmental responsiveness to parents and children involved in interjurisdictional custody disputes and suggesting innovations at local, state, and federal levels to better serve the needs of families involved in such disputes; and

4. Clearinghouse -- providing information and technical assistance upon request about relevant laws and procedures.

For further information regarding the project, please contact:

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APPENDIX III

A SURVEY OF STATE AND FEDERAL CHILD ABDUCTION AND RESTRAINT LAWS

Prepared by Patricia M. Hoff
Director, Child Custody Project
American Bar Association
July 31, 1981

Laws have been enacted by the states and by Congress to protect children from the harmful effects of "child snatching," the wrongful removal or retention of a child by a parent in violation of a court order, or in violation of the rights of the other parent where no custody decree has yet been made. What follows is a comprehensive survey of the child abduction and restraint statutes in effect throughout the country which apply to parents and/or their agents. (The statutes referred to herein as child abduction and restraint laws go by a variety of names, including "custodial interference," "child restraint," "child abduction," and parental kidnapping.") In addition, the survey provides citations to kidnapping, unlawful imprisonment, and criminal restraint statutes which may cover child abduction and restraint by a parent or agent of a parent: Statutes expressly exempting parents from prosecution are also noted. Where available, explanatory comments are reprinted.

Of the 53 jurisdictions surveyed, 39 states have felony child abduction and restraint statutes; 32 have misdemeanors; 20 have felonies and misdemeanors; and only 5 do not criminalize this kind of conduct at all. Many of these laws are new. For instance, Congress passed a law at the end of the 96th Congress which expressly declares the intent of Congress that the Federal Fugitive Felon Act (18 U.S.C. 1073) shall be applied in state felony child abduction and restraint cases. This portion of Pub. L. 96-611 took effect on December 28, 1980 and is designed to provide F.B.I. assistance to state and local law enforcement officials in investigating state felony child abduction and restraint cases which involve interstate flight. Other laws have been on the books for years but have often gone unenforced for a variety of reasons.

In order for child abduction and restraint laws to be effective as deterrents to this conduct and as vehicles for the eventual return and prosecution of perpetrators, federal and state law enforcement officers, prosecutors, and extradition officials should familiarize themselves with, and vigorously enforce, the statutes in effect in their jurisdictions.

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ALABAMA

Applicable laws (effective May 17, 1978):

§ 13A-6-41 Unlawful imprisonment in the first degree, misdemeanor.
§ 13A-6-42 Kidnapping in the first degree; felony.
§ 13A-6-45 Interference with custody; Class A misdemeanor

§ 13A-6-45. Interference with custody.

(a) A person commits the crime of interference with custody if he knowingly takes or entices:

(1) Any child under the age of 18 from the lawful custody of its parent, guardian or other lawful custodian, or

(2) Any committed person from the lawful custody of its parent, guardian or other lawful custodian. "Committed person" means, in addition to anyone committed under judicial warrant, any neglected, dependent or delinquent child, mentally defective or insane person or any other incompetent person entrusted to another's custody by authority of law.

(b) A person does not commit a crime under this section if:

(1) The actor is a relative of the child, and

(2) The actor's sole purpose is to assume lawful control of the child.

The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(c) Interference with custody is a Class A misdemeanor. (Acts 1977, No. 607, § 2215.)

§ 13A-6-40. Definitions.

(3) RELATIVE. A parent or stepparent, ancestor, sibling, uncle or other lawful custodian, including an adoptive relative of the same degree through marriage or adoption. (Acts 1977, No. 607, § 2201.)

§ 13A-6-45 Commentary.

Section 13A-6-45 is adapted from Michigan Revised Criminal Code § 2215; New York Revised Penal Law § 135.45; and New Jersey Penal Code § 2C:13-4. Here the main interest protected is not freedom from physical danger, since that is covered elsewhere, but the protection of parental custody against unlawful interruption. The proposal renders inapplicable the kidnapping sections to nonserious cases that involve an unlawful taking of a child under 16 years of age from his natural parent or guardian or a committed person from the custodian or institution to whom he has been entrusted, e.g., inmate from Boys Industrial School, Alabama Hospital for Insane, Alabama Department of Pensions and Security, etc. Any resulting harm or unlawful restraint is covered by assaults and related offenses, §§ 13A-6-20 through 13A-6-25, unlawful imprisonment, §§ 13A-6-41 and 13A-6-42 or sexual offenses, Chapter 6, Article 4. Of course, an abduction would come under one of the kidnapping offenses, §§ 13A-6-43 and 13A-6-44. There may be some overlap with the provisions of Chapter 10, Article 2, on escapes, but this does not seem serious. Cf. 13A-10-45, giving criminal assistance to escapee. (Underscoring added for emphasis.)

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The age of 18 is used in this section as it is the growing normal limit of parental authority in custody matters, since this is the age at which most youths become independent or seek self-support and enter higher education, the military service, marriage, etc.

Special provision is made to prevent abuse in certain custody battles between estranged parents. Under § 13A-6-45(b), the offense of custodial interference cannot be committed if the actor is a "relative," as defined in § 13A-6-40(3), and the actor's sole purpose was to assume lawful control or custody. This is the counterpart to § 13A-6-42(b), a similar exception based on custody wrangles.

ALASKA

Applicable laws (effective January 1, 1980)
§ 11.41.300 (a)(1) and (a)(2)( ) Kidnapping; unclassified felony (Note affirmative defense to prosecution under § 11.41.300 (a)(2)(A) if dependant is relative of child udner 18 and restrains the victim by secreting and holding him in a place where not likely to be found in order to assume his custody).
§ 11.41.320 Custodial interference in the first degree; Class C Felony.

§ 11.41.330 Custodial interference in the second degree; Class A misdemeanor.

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if he violates §330 of this chapter and causes the victim to be removed from the state.
(b) Custodial interference in the first degree is a class C felony.
(§ 3 ch 166 SLA 1978).
Sec. 11.41.330 Custodial interference in the second degree. (a)A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that he has no legal right to do so, he takes, entices, or keeps that child or incompetent person from his lawful custodian with intent to hold him for a protracted period.
(b) Custodial interference in the second degree is a class A misdemeanor
(§ 3 ch 166 SLA 1978).
Sec. 11.41.370. Definitions.
(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;
(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

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ARIZONA

Applicable laws (effective October 1, 1978)

§ 13-1302 Custodial interference; class 6 felony unless child is returned unharmed prior to arrest, in which case it is a class 1 misdemeanor.

§ 13-1303 Unlawful imprisonment; felony, may be reduced to misdemeanor as in § 13-1302; defense that defendant was relative of person restrained and sole intent was to assume lawful custody and restraint was accomplished without physical force.

§ 13-1304 Kidnapping; felony; may be reduced to lesser felony.

§ 13-1302 Custodial interference; classification.
A. A person commits custodial interference if, knowing or having reason to know that he has no legal right to do so, such person knowingly takes, entices or keeps from lawful custody any child less than eighteen years of age or incompetent, entrusted by authority of law to the custody of another person or institution.
B. Custodial interference is a class 6 felony unless the person taken from lawful custody is returned voluntarily by the defendant without physical injury prior to arrest in which case it is a class 1 misdemeanor.
Added Laws 1977, Ch.142, § 62, eff. Oct. 1, 1978.

ARKANSAS

Applicable laws (effective January 1, 1976)

§ 41-1702 Kidnapping; felony, may be reduced to lesser felony.
§ 41-1703 False imprisonment in the first degree; felony.
§ 41-1704 False imprisonment in the second degree; misdemeanor.
§ 41-2411 Interference with custody; Class D felony if child removed from state, otherwise Class A misdemeanor.

§ 41-2411. Interference with custody.--(1) A person commits the offense of interference with custody if, knowing that he has no lawful right to do so, he takes, entices, or keeps any person entrusted by court decree to the custody of another person or to an institution from the lawful custody of that person or institution.
(2) Interference with custody is a class D felony if such person taken, enticed, or kept without the state of Arkansas. Otherwise, it is a class A misdemeanor. (Acts 1975, No. 280, § 2411, p.--.)

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COMMENTARY

§ 41-2411. The Commission was not completely without sympathy for those who engage in such conduct and recognized that affection for the child is often the motivating factor for the offense, not greed or hostility. However, criminal sanctions are warranted if for no other purpose than to facilitate the enforcement of child custody orders. The Commission was persuaded for two reasons that felony liability is appropriate when the child is taken out of the state. First, as in the case of nonsupport, this should enhance the chances of extraditing the offender. Secondly, the person who removes the child entrusted to the care of another from this state has, in effect, nullified a decision of an Arkansas court, since the custody question must be relitigated in the courts of the jurisdiction to which the offender flees.

§ 41-1704. Section 1704, by its terms, applies to the parent who takes a child entrusted to the custody of the other parent. The Commission intended, however, that the criminal law be used in custody disputes, if at all, only pursuant to section 2411, defining the offense of interference with custody. The possibility of prosecution under section 1704 in such a situation should not create problems. Except where the child is taken outside the state, both offenses carry the same penalty. Furthermore, section 105(1)(d) prevents conviction of both false imprisonment and interference with custody as a result of the same conduct.

CALIFORNIA

Applicable laws (Title 8, Penal Code, effective July 1, 1977).

§ 207 Kidnapping; felony.
§ 236, 237 False imprisonment; misdemeanor; if effected by violence, menace, fraud, or deceit it is a felony.
§ 278 Child abduction; by a person having no right of custody; felony or misdemeanor.
§ 278.5 Wrongful removal, retention or concealment of a child in violation of custody or visitation rights; misdemeanor.

§ 278 Definition; punishment; return, expenses.

(a) Every person not having a right of custody who maliciously takes, entices away, detains or conceals any minor child with intent to detain or conceal such child from a parent, or guardian or other person having the lawful charge of such child shall be punished by imprisonment in the state prison for two, three or four years, a fine of not more than ten thousand dollars ($10,000), or both.

(b) A child who has been detained or concealed in violation of subdivision (a) shall be returned to the person having lawful charge of the child. Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Such costs shall be assessed against any defendant convicted of a violation of this section. (Added by Stats 1976, c. 1399, p.---, § 10. Amended by Stats. 1976, c. 1399, p.---, § 10.5, operative July 1, 1977.

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§ 278.5. Violation of custody decree; punishment; return; expenses.
(a) Every person who in violation of a custody decree takes, retains after the expirationof a visitation period, or conceals the child from his legal custodian, and every person who has custody of a child pursuant to an order, judgment or decree of any court which grants another person rights to custody or visitation of such child, and who detains or conceals such child with the intent to deprive the other person of such right to custody or visitation shall be punished by imprisonment in the state prison for a period of not more than one year and one day or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.
(b) A child who has been detained or concealed in violation of subdivision (a) shall be returned to the person having lawful charge of the child. Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Such costs shall be assessed against any defendant convicted of a violation of this section.
(Added by Stats.1976, c.1399, p.---,§ 11.)

COLORADO

Applicable laws (1973 Colorado Revised Statutes:1978 Replacement Volume)

§ 18-3-301 First degree kidnapping; felony.
§ 18-3-302 Second degree kidnapping; felony; not applicable to person who takes, entices or decoys his own child with intent to keep or conceal child from his guardian; exclusion may not apply to parent's agent.
§ 18-3-303 False imprisonment; misdemeanor.
§ 18-3-304 Violation of custody; class 5 felony; affirmative defense that offender believed conduct was necessary to preserve safety, or child over 14 was taken away at his own instigation or without enticement.

§ 18-3-304 Violation of custody. (1) Any person, including a natural or foster parent, who, knowing that he has no privilege to do so or heedless in that regard, takes or entices any child under the age of eighteen years from the custody of his parents, guardian, or other lawful custodian commits a class 5 felony.
(2) Any parent or other person who violates an order of any district or juvenile court of this state, granting the custody of a child under the age of eighteen years to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of a child under the age of eighteen years, commits a class 5 felony.
(3) It shall be an affirmative defense either that the offender reasonably believed that his conduct was necessary to preserve the child from danger to his welfare, or that the child, being at the time more than fourteen years old, was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.
Source: R & RE.L.71, p.422. § 1: C.R.S.1963. § 40-3-304.

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CONNECTICUT

Applicable laws (effective October 1, 1971)

§ 53a-92 Kidnapping first degree, felony.
§ 53-94 Kidnapping second degree, felony.
§ 53a-95 Unlawful restraint first degree, felony.
§ 53a-96 Unlawful restraint second degree, misdemeanor.
§ 53a-97 Custodial interference, first degree, Class D felony.
§ 53a-98 Custodial interference, second degree, Class A misdemeanor.

§ 53a-97 Custodial interference in the first degree: Class D felony

(a) A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree as defined in section 53a-98:

(1) Under the circumstances which expose the child or person taken or enticed from lawful custody to a risk that his safety will be endangered or his health materially impaired; or

(2) if he takes or entices the child or person out of this state.

(b) Custodial interference in the first degree is a class D felony. (1969, P.A. 828, § 99, eff. Oct. 1, 1971.)

§53a-98. Custodial interference in the second degree: Class A misdemeanor.

(a) A person is guilty of custodial interference in the second degree when:

(1) Being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

(2) knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution.

(b) Custodial interference in the second degree is a class A misdemeanor. (1969, P.A. 828, § 100, eff. Oct. 1, 1971.)

Commission Comment -- 1971

The offenses labeled "Custodial interference are for the purpose of specifically dealing with situations involving intentional and knowing violations of custody of children under sixteen and incompetent persons or persons the legal custody of whom has been given to some other person or institution. The first degree offense deals with the situation where the victim's safety or health was endangered, or where the child is taken out of the state.

Notes of Decisions

Where requisitioning warrant for extradition was issued on information based upon affidavits charging abduction of child by parent, but affidavit failed to prove absence of consent by complaining mother of allegedly abducted child, affidavits failed to establish commission of crime charged and warrant would not support extradition. People ex rel. Kuzner v. Police Dept. of City of New York (Sup.1950) 102 N.Y.S.2d 614.

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Connecticut statute defining crime of abduction of child by parent as occurring when parent shall decoy or forcibly take such child is violated only where consent is in fact lacking and possession of child was taken by decoy or by force. Id.

DELAWARE

Applicable laws (1979 Replacement Volume Title 11, Delaware Code Annotated)
§ 784 Affirmative defense to unlawful imprisonment and kidnapping if accused was relative of victim and sole purpose was to assume custody. Liability, if any, governed by § 785.
§ 785 Interference with custody; Class A misdemeanor; Family Court jurisdiction over such violation.

§ 784. Defense to unlawful imprisonment and kidnapping.
In any prosecution for unlawful imprisonment or kidnapping, it is an affirmative defense that the accused was a relative of the victim, and his sole purpose was to assume custody of the victim. In that case, the liability of the accused, if any, is governed by § 785 of this title, and he may be convicted under § 785 when indicted for unlawful imprisonment or kidnapping. (11 Del. C. 1953, § 784 58 Del.Laws, c.497, § 1.)

§ 785. Interference with custody; class A misdemeanor.
A person is guilty of interference with custody when:
(1) Being a relative of a child less than 16 years old, intending to hold the child permanently or for a prolonged period and knowing that he has no legal right to do so, he takes or entices the child from his lawful custodian; or
(2) Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.
Interference with custody is a class A misdemeanor. (11 Del.C. 1953, § 785; 58 Del.Laws, c.497, § 1.)
Cross reference. -- As to exclusive original criminal jurisdiction of Family Court for violation of this section, see § 922 of Title 10.

DISTRICT OF COLUMBIA

Applicable laws (D.C. Code Encyclopedia, Annotated, 1976)
§ 22-2101 Kidnapping; felony; parents expressly excluded.
No specific child abduction or restraint law.

§ 22-2101. Definition and penalty--Conspiracy
Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnaping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise, except in the case of a minor by a parent thereof, shall, upon conviction thereof, be punished by imprisonment for life or for such term as the court in its discretion may determine. This section shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying kidnaping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia.

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If two or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and one or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. Mar. 3, 1901, ch. 854, § 812, 31 Stat. 1322; Feb. 18, 1933, ch. 103, 47 Stat. 858, Nov. 8, 1965, Pub.L. 89-347, § 3, 79 Stat. 1307.

Encyclopedic Commentary

Abduction or kidnaping by parent. The purpose of the amendment of this section by the Act of November 8, 1965, in, among other things making this section inapplicable to cases involving the taking of a minor child by one of the parents of such child, was to bring this section into closer conformity with the Federal statute on kidnaping, 18 U.S.C.A. §§ 1201, 1202.

FLORIDA

Applicable laws (Title 44, effective October 1, 1975)

§ 787.01 Kidnapping, felony. Includes confinement of child under 13 if without consent of his parent or legal guardian and if other elements of offense are present.

§ 787.02 False imprisonment, felony. Comment, above, also applies.

§ 787.03 Interference with custody; first degree misdemeanor; applies to children 17 and under; defense that defendant reasonably believed action was necessary to protect child from danger or child was taken away at his own instigation without enticement.

§ 787.04 Felony in third degree to remove children from state or to conceal child contrary to court order, to remove child during pending custody proceeding of which he has notice, or to fail to produce child in the court pursuant to court order.

787.03 Interference with custody.

(1) Whoever, without lawful authority, knowingly or recklessly takes or entices any child 17 years of age or under or any incompetent person from the custody of his parent, guardian, or other lawful custodian commits the offense of interference with custody and shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082, or § 775-083 or § 775.084.

(2) It is a defense that:

(a) The defendant reasonably believes that his action was necessary to preserve the child or the incompetent person from danger to his welfare.

(b) The child or incompetent person was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child (or incompetent person).

(3) Proof that a child was 17 years (of age) or under creates the presumption that the defendant knew the child's age or acted in reckless disregard thereof.

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787.04 Felony to remove children from state or to conceal children contrary to court order.
(1) It is unlawful for any person, in violation of a court order, to lead, take, entice, or remove a child beyond the limits of this state, or to conceal the location of a child, with personal knowledge of the order.
(2) It is unlawful for any person, with criminal intent, to lead, take, entice, or remove a child beyond the limits of this state, or to conceal the location of a child, during the pendency of any action or proceeding affecting custody of the child, after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending.
(3) It is unlawful for any person, who has carried beyond the limits of this state any child whose custody is involved in any action or proceeding pending in this state, pursuant to the order of the court in which the action or proceeding is pending, or pursuant to the permission of the court, thereafter, to fail to produce the child in the court or deliver the child to the person designated by the court.
(4) Any person convicted of a violation of this law shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.
Amended by Laws 1980, c.80.102, §1, eff. Oct. 1, 1980.

GEORGIA

Applicable laws (Effective July 1, 1978)

§ 26-1306 False imprisonment; felony.
§ 26-1311 Kidnapping; felony; applies to a person over 17 when he forcibly, maliciously, or fraudulently leads, takes, or carries away, or decoys or entices away, any child under 16 against the will of the child's parents or other person having lawful custody.
§ 26-1312 Interference with custody; felony to remove from state; otherwise misdemeanor. Crime includes bringing child into state without consent of lawful custodian.

26-1312 Interference with custody.
(a) A person commits interference with custody when he:
(1) Knowingly or recklessly takes or entices any committed person away from lawful custody when he is not privileged to do so.
(2) Knowingly brings into this State a committed person who has been committed to the custody of another person who is a resident of another state or nation, without the consent of the person with legal custody.
(3) Knowingly harbors any committed person who has absconded.
(b)(1) Except as provided in paragraph (2) of this subsection, any person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as for a misdemeanor.
(2) A person convicted of interference with custody by taking a committed person beyond the limits of this State shall be punished by imprisonment for not less than one nor more than five years.
(c) As used in this section:
(1) Person includes a parent of a committed person.
(2) "Committed person" means, in addition to anyone committed or whose custody is awarded under judicial warrant or court order, any orphan, neglected, or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by authority of law.
(Acts 1968, pp.1249, 1283, 1978, p.1420, eff.July 1, 1978.)
Editorial Note
Acts 1978, p.1420, entirely superseded the former section.

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HAWAII

Applicable laws.

§ 707-721 Unlawful imprisonment in first degree; felony.

§ 707-722 Unlawful imprisonment in second degree, misdemeanor; affirmative defense that (a) the person restrained was less than eighteen years old, (b) the defendant was a relative of the victim, and (c) his sole purpose was to assume custody over the victim. In that case, the liability of the defendant, if any, is governed by (section 707-723) section ___ and he may be convicted under (section 707-723) section ___ although charged under this section.

§ 707-723 Custodial interference, misdemeanor; (effective 1972); repealed, 1981.

§ 707- Custodial interference in the first degree, Class C felony, effective June 17, 1981.

§ 707- Custodial interference in the second degree, misdemeanor; effective June 17, 1981.

§ 707 - Custodial interference in the first degree. (1) A person commits the offense of custodial interference in the first degree if: (a) Being a relative of the person, he knowingly takes or entices a person less than eighteen years old from any other person who has a right to custody pursuant to a court order, judgment, or decree; and (b) He removes himself and the person less than eighteen years old from the State. (2) Custodial interference in the first degree is a class C felony.

§ 707 - Custodial interference in the second degree. (1) A person commits the offense of custodial interference in the second degree if: (a) He knowingly takes or entices a person less than eighteen years old from his lawful custodian, knowing that he has no right to do so; or (b) He knowingly takes or entices from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution. (2) Custodial interference in the second degree is a misdemeanor."

EXCERPT FROM BILL REPORT

The purpose of this bill is to create a new crime of custodial interference in the first degree which makes it a class C felony for a relative of a child to knowingly take the child away from a person who has the right to the child's custody based on a court order, and to leave the State with the child. Presently, custodial interference is a misdemeanor under Section 707-723. Further, the bill retains the present language in Section 707-723, but reclassifies the offense as custodial interference in the second degree.

Since child snatching is presently not a felony crime in Hawaii, a state fugitive felony warrant cannot be issued, and the federal criminal provisions under this Act (i.e. the Parental Kidnapping Prevention Act of 1980) would not be applicable. The change in classification of custodial interference in the first degree to a class C felony will enable the issuance of a state fugitive felony warrant, whereupon the FBI could be called on to track down the child snatching parent.

This felony provision is intended to cover a specific, limited situation in which the following three elements must be present: (1) The snatcher must be a relative; (2) The child must be taken in violation of a court order; and (3) the person and the child must leave the state. This statute would not, for example, cover the situation where a child is sent to the mainland to visit with the non-custodial parent who lives there, and the parent decides not to return the child to the parent in Hawaii. The bill is aimed at deterring, overcoming, and prosecuting the most overt and blatant type of child snatching situation.

The misdemeanor provision (custodial interference in the second degree) is intended to cover situations where a relative or non-relative of a child takes and conceals a child in violation of a court order, oftentimes not leaving the State.

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IDAHO

Applicable laws.
§ 18-4501 Kidnapping; felony; applies to every person who willfully ... --2. Leads, takes, entices away or detains a child under the age of sixteen years, with intent to keep or conceal it from its parent, guardian or other person having lawful care or control thereof, or with intent to steal any article upon the person of the child; or,
§ 18-1502 Kidnapping, first degree; for ransom; felony.
§ 18-4503 Kidnapping, second degree; not for ransom; felony.

No specific child abduction or restraint law.

ILLINOIS

Applicable laws, Title 38.
§ 10-1 Kidnapping; felony; confinement of child under 13 considered against his will if without consent of his parent or legal guardian.
§ 10-2 Aggravated kidnapping; felony; if violates § 10-1 and ... (2) takes as his victim a child under 13.
§ 10-3 Unlawful restraint; felony.
§ 10-5 Child Abduction; Class 4 felony; removal of child from state, or concealing child within state with intent to violate court order. Three affirmative defenses set forth. (Effective August 22, 1978).

§ 10-5 Child Abduction.
(a) Definitions. (1) "Court order," as used in this Section, means an order of an Illinois court having jurisdiction over the person of a child; (2) "Child," as used in Subsections (b)(1) and (b)(2) means a person under the age of 14 at the time the violation of this Section is alleged to have occurred.
(b) Offense. A person commits child abduction when, with intent to violate a court order awarding custody of a child to another, he or she:
(1) removes the child from Illinois without the consent of the person lawfully having custody of the child; or
(2) conceals the child within Illinois.
(c) Affirmative Defenses. It shall be an affirmative defense that:
(1) at the time the court order awarding custody of the child to another was entered, the defendant had custody of the child pursuant to a valid order of a court having jurisdiction over the person of that child; or
(2) after the court order awarding custody of the child to another was entered, the defendant obtained custody of the child pursuant to the order of a court which had jurisdiction over the person of that child, and which had been advised of the prior court order, and which court specifically found the prior court order to be invalid as a matter of law; or
(3) within 72 hours of the alleged violation of this Section, the defendant submitted the child to the jurisdiction of an Illinois court.
(d) Limitations. Nothing contained in this Section shall be construed to limit the court's civil contempt power.
(e) Penalty. Child abduction is a Class 4 felony.

Laws 1961, p.1983, § 10-5, added by P.A. 80-1393, § 1, eff. August 22, 1978.

Section 2 of P.A. 80-1393, approved August 22, 1978, provided: "This amendatory Act takes effect upon its becoming a law."

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INDIANA

Applicable laws
§ 35-42-3-2 Kidnapping; felony.
§ 35-42-3-3 Criminal confinement; felony; includes knowing or intentional removal of a person under 18 to a place outside Indiana when the removal violates a child custody order of a court. However, return of child to custodial parent within 7 days of removal may be considered as mitigating circumstance. (Effective 1979).

35-42-3-3 Criminal confinement.
Sec. 3. (a) A person who knowingly or intentionally:
(1) confines another person without his consent;
(2) removes another person, by fraud, enticement, force, or threat of force, from one place to another, or
(3) removes another person, who is under eighteen (18) years of age, to a place outside Indiana when the removal violates a child custody order of a court:
commits criminal confinement, a Class D felony. However, the offense is a Class C felony if the child is not his child, and a Class B felony if it is committed while armed with a deadly weapon or results in serious bodily injury to another person.
(b) With respect to the violation of subdivision (a)(3) of this section, it may be considered as a mitigating circumstance if the accused person returned the other person to the custodial parent within seven (7) days of the removal. As amended by Acts 1979, P.L.299, SEC.1.
1979 Amendment. Acts 1979, P.L. 299, Sec. 1, rewrote the section.

IOWA

Applicable laws (Effective January 1, 1978.
§ 710-2 Kidnapping in first degree; felony.
§ 710-3 Kidnapping in second degree; felony.
§ 710-4 Kidnapping in third degree; felony
§ 710-5 Child stealing; Class C felony.
§ 710-6 Violating custodial order; Class D felony when removed from state; serious misdemeanor in described cases.
§ 710-7 False imprisonment; serious misdemeanor.

710.5 Child stealing.
A person commits a class C felony when, knowing that he or she has no authority to do so, forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or conceal such child from its parents or guardian, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of such child.
Acts 1976 (66 G.A.)ch.1245, ch.1, § 1005, eff. Jan. 1, 1978.

710.6 Violating custodial order.
Any relative of a child who, acting in violation of any order of any court which fixes, permanently or temporarily, the custody of such child in another, takes and removes such child from the state, and conceals the child's whereabouts without the consent of the person having lawful custody, commits a class D felony.
Any parent of a child living apart from the other parent who takes and conceals that child from another within the state in violation of a custodial order and without the other parent's consent shall be guilty of a serious misdemeanor.
Any parent of a child living apart from the other parent who conceals that child in violation of a court order granting visitation rights and without the other parent's consent, shall be guilty of a serious misdemeanor.
Acts 1976 (66 G.A.) ch. 1245, ch.1, § 1006, eff. Jan. 1, 1978. Amended by Acts 1978 (67 G.A.)ch.1029. § 49.

KANSAS

Applicable laws (Effective July 1, 1970)
§ 21-3420 Kidnapping; felony
§ 21-3421 Aggravated kidnapping; felony.
§ 21-3422 Interference with parental custody; Class A misdemeanor.
§ 21-3422(a) Aggravated interference with parental custody; Class E felony; (Effective July 1, 1978).
§ 21-3424 Unlawful restraint.

21-3422. Interference with parental custody.
Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of fourteen (14) years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.
Interference with parental custody is a class A misdemeanor. (L.1969, ch.180, §21-3422 July 1, 1970.)

21-2311a. Aggravated interference with parental custody.
(1) Aggravated interference with parental custody is hiring someone to commit the crime of interference with parental custody, as defined by K.S.A. 21-3422, or commiting interference with parental custody, as defined by K.S.A. 21-3422, when done with the intent to deprive of custody such child's parent, guardian, or other person having the lawful charge or custody of such child, and when:
(a) Committed by a person who has previously been convicted of interference with parental custody, as defined by K.S.A. 21-3422;
(b) committed by a person for hire;
(c) committed by a person who takes the child outside the state without the consent of either the person having custody or the court;
(d) committed by a person who, after lawfully taking the child outside the state while exercising visitation rights, refuses to return the child at the expiration of such rights; or
(e) committed by a person who, at the expiration of visitation rights outside the state, refuses to return or impedes the return of such child.
Aggravated interference with parental custody is a class E felony.
(2) This section shall be a part of and supplemental to the Kansas criminal code.
History: L.1978, ch.121, § 1; July 1.

KENTUCKY

Applicable laws (Effective 1980).
§ 509-060 Defense to any unlawful imprisonment or kidnapping charge that defendant was a relative of victim and his sole purpose was to assume custody of victim.
§ 509-070 Custodial interference; Class D felony or Class A misdemeanor if defendant is relative of victim.

509.070. Custodial interference. -
(1) A person is guilty of custodial interference when, knowing that he has no legal right to do so, he takes, entices or keeps from lawful custody any mentally disabled or other person entrusted by authority of law to the custody of another person or to an institution.
(2) It is a defense to custodial interference that the person taken from lawful custody was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.
(3) Custodial interference is a Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant or unless the defendant is a relative of the victim in which case it is a Class A misdemeanor. (Enact. Acts 1974, ch. 406, § 79.), amended 1980.

LOUISIANA

Applicable laws

§ 14.45 Simple kidnapping; felony. Includes parent taking child in violation of custody order without consent and with intent to defeat the jurisdiction of court that issued decree.

§ 14.46 False imprisonment; misdemeanor.

§14.45 Simple kidnapping.

A. Simple kidnapping is: (4) The intentional taking, enticing or decoying away and removing from the state, by any person to whom custody has been awarded by any court of competent jurisdiction of any state, without the consent of the legal custodian, with intent to defeat the jurisdiction of the said court over the custody of the child. (5) The taking, enticing or decoying away and removing from the state, by any person, other than the parent, of a child temporarily placed in his custody by any court of competent jurisdiction in the state, with intent to defeat the jurisdiction of said court over the custody of the child.

B. Whoever commits the crime of simple kidnapping shall be fined not more than two thousand dollars or be imprisoned, with or without hard labor, for not more than five years, or both.

Amended by Acts 1962, No. 344, § 1; Acts 1966, No. 253, § 1.

MAINE

Applicable laws (effective 1979)

§ 17A-301 Kidnapping; Class A crime. Defense that person restrained is the child of the actor.

§ 17A-302 Criminal restraint, Class D crime. Defense that the actor is the parent of the person taken, retained, enticed or restrained.

§ 17A-303 Criminal restraint by parent; Class E crime (apparently equivalent to misdemeanor).

§ 17A-303 Criminal restraint by parent.

1. A person is guilty of criminal restraint by parent if, being the parent of a child under the age of 16, he takes, retains or entices the child from the custody of his other parent, guardian or other lawful custodian, knowing he has no legal right to do so and with the intent to remove the child from the State or to secrete the child and hold him in a place where he is not likely to be found.

2. Consent by the person taken, enticed or retained is not a defense under this section.

3. A law enforcement officer shall not be held liable for taking physical custody of a child whom he reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person whom he reasonably believes is the child's lawful custodian or to any other suitable person.

4. A law enforcement officer may arrest without a warrant any person who he has probable cause to believe has violated or is violating this section.

5. Criminal restraint by parent is a Class E crime.

Added by 1979, c.512, § 26.

MARYLAND

Applicable laws (effective July 1, 1978)

Art. 27, § 337 Kidnapping; felony. Specifically exempts parents.

Art. 27, § 2A Child Abduction; misdemeanor.

§ 2A. Child abduction.

(a) "Lawful custodian" defined. - As used in this section, "lawful custodian" means a person authorized, either alone or together with another person or persons, to have custody and exercise control over a child less than 12 years of age at the time and place of an act to which any provision of this section is, or may be alleged to be, applicable. The term shall include any person so authorized:

(1) By an order of a court of competent jurisdiction of this State.

(2) By an order of a court of competent jurisdiction of another state, territory, or the District of Columbia. However, when there has been a designation of a lawful custodian by an order of a court of this State and there appears to be a conflict between that order and a custody order issued by the court of another state or jurisdiction qualifying some other person as the custodian of the child, the "lawful custodian" is the person appointed by order of a court of this State unless the order of the other state or jurisdiction:

(i) Is later in date than the order of a court of this State; and
(ii) Was issued in proceedings in which the person appointed by a custody order of a court of this State either consented to the custody order entered by the court of the other state or jurisdiction, or participated therein personally as a party.
(b) Meaning of "relative." -- As used in this section, "relative" means a parent, other ancestor, brother, sister, uncle, or aunt, or one who has at some prior time been a lawful custodian.
(c) Prohibited acts. -- A relative, who is aware that another person is a lawful custodian of a child, may not:
(1) Abduct, take, or carry away a child under 12 years of age from the lawful custodian;
(2) Detain a child under 12 years of age away from the lawful custodian for more than 48 hours after return is demanded by the lawful custodian;
(3) Harbor or secrete a child under 12 years of age knowing that the physical custody of the child has been obtained or retained in violation of this section; or
(4) Act as an accessory to any of the actions forbidden in this section.
(d) Penalty. -- A person convicted of violating any provision of this section is guilty of a misdemeanor; and upon conviction, shall be imprisoned for a period not exceeding 30 days, or fined a sum not exceeding $250, or both.
(e) Determination constituting defense.-- If the court determines that the abducting, detaining, or secreting of a child by a relative was done at a time or times when to do otherwise would have resulted in a clear and present danger to the health, safety, or welfare of the child, and if, within 96 hours of such abducting, detaining, or secreting, the relative submits a petition to a court of competent jurisdiction within this State explaining the circumstances and seeking to revise, amend, or clarify the existing custody order, then this determination shall be a complete defense to any action brought pursuant to this section. (1978, ch. 435.)

MASSACHUSETTS

Applicable laws
265 § 26 Kidnapping; felony. The provisions shall not apply to the parent of a child under eighteen years of age who takes custody of such child unless such parent acts in violation of any court order or decree relating to the adoption or custody of such child. (Effective 1971)
265 § 26A Custodial interference by Relatives; misdemeanor unless child exposed to danger, in which case it is a felony.

265 § 26A Custodial Interference by Relatives.
Whoever, being a relative of a child less than eighteen years old, without lawful authority, holds or intends to hold such a child permanently or for a protracted period, or takes or entices such a child from his lawful custodian, or takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution shall be punished by imprisonment in the house of correction for not more than one year or by a fine of up to one thousand dollars, or both. Whoever commits any offense described in this section under circumstances which expose the person taken or enticed from lawful custody to a risk which endangers his safety shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment. (1979, 465, § 2, approved Aug. 9, 1979, effective 90 days thereafter.)

MICHIGAN

Applicable laws.
§ 750-349 (§ 28-581) Kidnapping; felony.
§ 750-350 (§ 28-582) Enticing away, etc., child under 14; felony.

750.350. ENTICING AWAY, ETC., CHILD UNDER 14 YEARS OF AGE -
Any person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of 14 years, with intent to detain or conceal such child from its parent or guardian, or from the person or persons who have lawfully

adopted said child or from any other person having the lawful charge of said child, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years. In case such child shall have been adopted by a person or persons other than its parents, in accordance with the statute providing for such adoption, then this section shall apply as well to such taking, carrying, decoying or enticing away of such child, by its father or mother, as by any other person.

MINNESOTA

Applicable law.

§ 609.25 Kidnapping; felony. Commentary indicates the legislative intent is to distinguish parental from other kidnapping; seems this statute would not be applied to parents.

§ 609.26 Obtaining or retaining a child; misdemeanor; (effective May 30, 1979).

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1978, Section 609-26, is amended to read 609.26.

Obtaining or retaining a child.

Subdivision 1. Whoever intentionally takes, detains or fails to return his own child under the age of 18 years in violation of an existing court order which grants another person rights of custody may be sentenced as provided in subdivision 5.

Subd. 2. Whoever detains or fails to return a child under the age of 18 years knowing that the physical custody of the child has been obtained or retained by another in violation of subdivision 1 may be sentenced as provided in subdivision 5.

Subd. 3. A person who violates this section may be prosecuted and tried either in the county in which the child was taken, concealed or detained or in the county of lawful residence of the child.

Subd. 4. A child who has been obtained or retained in violation of this section shall be returned to the person having lawful custody of the child. In addition to any sentence imposed, the court may assess any expense incurred in returning the child against any person convicted of violating this section.

Subd.5. Whoever violates this section may be sentenced as follows:

(1) To imprisonment for not more than 90 days or to payment of a fine of not more than $500, or both, hf he voluntarily returns the child within 14 days after he takes, detains or fails to return the child in violation of this section; or

(2) Otherwise to imprisonment for not more than one year and one day or to payment of a fine of $1,000, or both.

Sec. 2. Effective date. This act is effective on the day following final enactment and applies to all crimes committed on or after that date.

Approved May 29, 1979.

MISSISSIPPI

Applicable laws.

§ 97-3-53 Kidnapping; felony; includes forcibly seizing, inveigling, or kidnapping of child under 10 without lawful authority and secretly confining child against the will of the parents or guardian or person having lawful custody.

§ 97-5-5 Enticing child under 14 for concealment, prostitution or marriage; misdemeanor or felony.

§ 97-3-53 Kidnapping--capital punishment authorized.

Any person who shall without lawful authority forcibly seize and confine any other person, or shall inveigle or kidnap any other person with intent to cause such person to be secretly confined or imprisoned against his or her will, or shall without lawful authority forcibly seize, inveigle or kidnap any child under the age of ten (10) years and secretly confine such child against the will of the parents or guardian or person having the lawful custody of such child shall, upon conviction, be imprisoned for life in the state penitentiary if the punishment is so fixed by the jury in its verdict. If the jury fails to agree on fixing the penalty at imprisonment for life the court shall fix the penalty at not less than one (1) year nor more than thirty (30) years in the state penitentiary.

This section shall not be held to repeal, modify or amend any other criminal statute of this state.

SOURCES: Laws, 1974, ch. 576, § 3, eff from and after passage (approved April 23, 1974).

§ 97-5-5 Enticing child for concealment, prostitution or marriage.
Every person, who shall maliciously, wilfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage, shall, on conviction, be imprisoned in the penitentiary not exceeding ten years, or imprisoned in the county jail not more than one year, or fined not more than one thousand dollars, or both.

MISSOURI

Applicable laws (Effective January 1, 1979).
§ 565.110 Kidnapping; felony.
§ 565.120 Felonious restraint.
§ 565.130 False imprisonment; in state, misdemeanor; out-of-state; felony.
§ 565.140 Defenses to false imprisonment for parents and relatives.
§ 565.150 Interference with custody; in-state - Class A misdemeanor; if child removed from state, it is a Class D felony.

565.140. Defenses to false imprisonment.
1. A person does not commit false imprisonment under section 565.130 if the person restrained is a child under the age of seventeen and
(1) A parent, guardian or other person responsible for the general supervision of the child's welfare has consented to the restraint; or
(2) The actor is a relative of the child; and
(a) The actor's sole purpose is to assume control of the child; and
(b) The child is not taken out of the state of Missouri.
2. For the purpose of this section, "relative" means a parent or stepparent, ancestor, sibling, uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.
3. The defendant shall have the burden of injecting the issue of a defense under this section.
L.1977, p.---,S.B.No.60, § 1, eff. Jan. 1,1979.
565.150. Interference with custody.
1. A person commits the crime of interference with custody if, knowing that he has no legal right to do so, he takes or entices from lawful custody any person entrusted by order of a court to the custody of another person or institution.
2. Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from this state, in which case it is a class D felony.
L.1977, p.---,S.B.No.60, § 1,eff. Jan. 1, 1979.

MONTANA

Applicable laws. (Montana Code Annotated)
§ 45-5-301 Unlawful restraint; misdemeanor.
§ 45-5-302 Kidnapping; felony.
§ 45-5-303 Aggravated kidnapping; felony.
§ 45-5-304 Custodial interference; felony. Person who returns child within specified periods does not commit offense. Effective 1979.)

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.
(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.
(3) A person who has not left the state does does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.
History: En.94-5-305 by Sec. 1, Ch.513, L.1973; R.C.M. 1947, 94-5-305; amd. Sec.1, Ch.274, L.1979.

Commission Comment.

Violation of lawful custody, especially of children, requires special legislation notwithstanding its similarity in some respects to kidnaping. The interest protected is not freedom from physical danger or terrorization by abduction, since that is adequately covered by sections 94-5-302 and 94-5-303, but rather the maintenance of parental custody against all unlawful interruption, even when the child is a willing, undeceived participant in the attack on the parental interest. The problem is further distinguishable from kidnapping by the fact that the offender will often be a parent or other person favorably disposed toward the child. One should be especially cautious in providing penal sanctions applicable to estranged parents struggling over the custody of their children, since such situations are better regulated by custody orders enforced through contempt proceedings. Despite these distinctive aspects of childstealing and the existence of special provisions on the subject in most jurisdictions, the problem is frequently covered by kidnaping and the penalties and exceptions do not adequately reflect the special circumstances.

NEBRASKA

Applicable laws.

§ 28-313	Kidnapping; felony.
§ 28-314	False imprisonment, first degree; felony.
§ 28-315	False imprisonment, second degree; misdemeanor.
§ 28-316	Violation of custody; Class II misdemeanor unless violation contravenes court award of custody in which case it is a Class IV felony. (Effective January 1, 1979.)

28-316. Violation of custody; penalty. (1) Any person, including a natural or foster parent, who, knowing that he has no legal right to do so or, heedless in that regard, takes or entices any child under the age of eighteen years from the custody of its parent having legal custody, guardian, or other lawful custodian commits the offense of violation of custody.

(2) Except as provided in subsection (3) of this section, violation of custody is a Class II misdemeanor.

(3) Violation of custody in contravention of an order of any district or juvenile court of this state granting the custody of a child under the age of eighteen years to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of such child, is a Class IV felony.

Source: Laws 1977, LB 38, § 31.
Operative date January 1, 1979.

NEVADA

Applicable laws.

§ 200.310, 320, 330	Kidnapping, felony; includes every person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine it from its parents, guardians, or any other person having lawful custody of such minor.
§ 200.340	Penalty for aiding and abeting.
§ 200.350	Consent of person under 18 not a defense.
§ 200.359	Detention, concealment, removal of child from person having lawful custody in violation of court order a misdemeanor.

200.359. Detention, concealment, removal of child from person having lawful custody in violation of court order a misdemeanor. Every person having a limited right of custody to a child pursuant to an order, judgment or decree of any court, or any parent having no right of custody to the child, who in violation of an order, judgment or decree of any court detains, conceals or removes such child from a parent, guardian or other person having lawful custody is guilty of a misdemeanor.

(Added to NRS by 1975, 1397)

NEW HAMPSHIRE

Applicable laws (Effective Nov. 1, 1973).
§ 633.1 Kidnapping; felony.
§ 633.2 Criminal restraint; felony; covers confinement of child under 16 if accomplished without consent of his parent or guardian.
§ 633.3 False imprisonment; Misdemeanor applies to children in same manner as § 633.2.
No specific child abduction or restraint law.

NEW JERSEY

Applicable laws (Effective September 1, 1979).
§ 2C:13-1 Kidnapping; crime of first or second degree includes kidnapping of child under 14 if it is accomplished without consent of a parent, guardian, or other person responsible for general supervision or welfare.
§ 2C:13-2 Criminal restraint; crime of third degree; affirmative defense to prosecution under subsection (b) if the person held was a child less than 18 years old and the action was a relative or legal guardian of such child and his sole purpose was to assume control of such child.
§ 2C:13-3 False imprisonment; disorderly persons offense; same affirmative defense as in criminal restraint.
§ 2C:13-4 Interference with custody; disorderly persons offense.

2C:13-4. Interference With Custody
a. Custody of children. A person commits an offense if he knowingly takes or entices any child under the age of 18 from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so, or he does so in violation of a court order. It is an affirmative defense that:
(1) The actor believed that his action was necessary to preserve the child from danger to its welfare; or
(2) The child, being at the time not less than 14 years old, was taken away at its own volition and without purpose to commit a criminal offense with or against the child.
Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age.
The offense is a crime of the fourth degree if the actor is neither a parent of or person in equivalent relation to the child and if he acted with knowledge that his conduct would cause serious alarm for the child's safety or in reckless disregard of a likelihood of causing such alarm. In all other cases it is a disorderly persons offense.

NEW MEXICO

Applicable laws (New Mexico Statutes Annotated, 1978).
§ 30-4-1 Kidnapping; felony.
§ 30-4-3 False imprisonment; felony.
§ 30-4-4 Custodial interference, 4th degree felony; requires removal of child from state.

30-4-4. Custodial interference; penalty.
A. Custodial interference consists of the taking from this state or causing to be taken from this state, or enticing to leave this state or causing to be enticed to leave this state, a child who is less than sixteen years of age by a parent with the intention of holding the child permanently or for a protracted period, knowing that he has no legal right to do so.
B. Whoever commits custodial interference is guilty of a fourth degree felony.

NEW YORK

Applicable law

§ 135.15 Unlawful imprisonment.

In any prosecution for unlawful imprisonment, it is an affirmative defense that (a) the person restrained was a child less than sixteen years old, and (b) the defendant was a relative of such child, and (c) his sole purpose was to assume control of such child. L.1965, c.1030.

Practice Commentaries, by Arnold D. Hechtman

The exclusion applies only to the taking of children "less than sixteen years old." The net effect is that a relative who unlawfully takes a child from its lawful custodian solely for "control" purposes is guilty of custodial interference if the child is less than sixteen but of unlawful imprisonment if he is sixteen or older. Under no circumstances is he guilty of kidnapping (see § 135.30).

§ 135.30 Kidnapping; defense.

In any prosecution for kidnapping, it is an affirmative defense that (a) the defendant was a relative of the person abducted, and (b) his sole purpose was to assume control of such person. L.1965, c.1030.

Practice Commentaries, by Arnold D. Hechtman

This section renders the kidnapping statutes inapplicable to cases involving unlawful taking of a child by a parent or other "relative" from another parent or relative who is its lawful custodian, purely for purposes of assuming control over the child. Although these "custody" offenses constituted kidnapping under the former Penal Law (§ 1250), under the Revised Penal Law they are prosecutable only as "custodial interference" if the child is less than sixteen years old (§§ 135.45, 135.50), and only as "unlawful imprisonment" if the child is sixteen years of age or older (§§ 135.05, 135.10, 135.15).

The exclusion of the instant section, it should be noted, applies only where the relative's "sole purpose" was assumption of physical control over the child. A relative who, for example, abducts a child for the purpose of ransom, extortion or terrorization of its mother or other lawful custodian is guilty of kidnapping.

§ 135.45 Custodial interference in second degree; Class A misdemeanor.
§ 135.50 Custodial interference in first degree; Class E felony. (Effective July 27, 1981)

§ 135.45 Custodial interference in the second degree.

A person is guilty of custodial interference in the second degree when:

1. Being a relative of a child less than sixteen years old, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, he takes or entices such child from his lawful custodian; or

2. Knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.

Custodial interference in the second degree is a class A misdemeanor. L.1965, c.1030.

§ 135.50 Custodial intereference in the first degree.

A person is guilty of custodial interference in the first degree when he commits the crime of custodial interference in the second degree:

1. With intent to permanently remove the victim from this state, he removes such person from the state; or

2. Under circumstances which expose the victim to a risk that his safety will be endangered or his health materially impaired. It shall be an affirmative defense to a prosecution under this section that the victim has been abandoned or that the taking was necessary in an emergency to protect the victim because he has been subjected to or threatened with mistreatment or abuse.

Custodial interference in the first degree is a class E felony.

Excerpt from memorandum in support of S.5710:

Custodial interference has occurred with alarming frequency in recent years. . . This bill extends custodial interference in the first degree to include removal of the child from New York State . . . As an E-felony, extradition will be increased . . . This legislation is necessary to implement recently enacted Federal legislation. . .

NORTH CAROLINA

Applicable laws

§ 14-39	Kidnapping, felony.
§ 14-41	Abduction of children under 14; felony.
§ 14-42	Conspiring to abduct children; felony.
§ 14-320.1	Transporting or keeping child outside the State with intent to violate custody order. Class J felony. (Effective July 1, 1980.)

§ 14.320.1 Transporting child outside the State with intent to violate custody order.-- When any court of competent jurisdiction in this State shall have awarded custody of a child under the age of sixteen years, it shall be a felony for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within this State to any point outside the limits of this State or to keep any such child outside the limits of this State. Such crime shall be punishable as a Class J felony. Provided that keeping a child outside the limits of the State in violation of a court order for a period in excess of seventy-two hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking. (1969, c.81.)

(Amendment Effective July 1, 1980. - Session Laws 1979, c.760, s.5, effective July 1, 1980, will rewrite the second sentence of this section to read as follows: "Such crime shall be punishable as a Class J felony.")

(Session Laws 1979, c.760.s.6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise.")

§ 14-41. Abduction of children. -- If anyone shall abduct or by any means induce any child under the age of fourteen years, who shall reside with its father, mother, uncle, aunt, brother or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, to leave such person or school, he shall be guilty of a felony, and on conviction shall be fined or imprisoned in the State's prison for a period not exceeding fifteen years. (1879, c.81, Code, s.973, Rev., s.3358, C.S.,s.4223.)

§ 14.42. Conspiring to abduct children.-- If anyone shall conspire to abduct, or by any means to induce any child under the age of fourteen years, who shall reside with any of the persons designated in § 14-41, or shall reside at school, to leave such persons or the school, he shall be guilty of a felony, and on conviction shall be punished as prescribed in that section: Provided, that no one who may be a nearer blood relation to the child than the persons named in § 14-41 shall be indicted for either of said offenses. (1879, c.81, s.2; Code, s.974, Rev., s.3359; C.S.,s.4224.)

NORTH DAKOTA

Applicable laws

§ 12.1-18-01	Kidnapping; felony.
§ 12.1-18-02	Felonious restraint; includes secreting or holding person in place not likely to be found.
§ 12.1-18-03	Parents have defense to prosecution for unlawful imprisonment.
§ 14-14-22.1	Removal of child from state in violation of custody decree; Class C felony. (Effective 1979.)

14-14-22.1. Removal of child from state in violation of custody decree -- Penalty. Any person who intentionally removes, causes the removal of, or detains his or her own child under the age of eighteen years outside North Dakota with the intent to deny another person's rights under an existing custody decree shall be guilty of a class C felony. Detaining the child outside North Dakota in violation of the custody decree for more than seventy-two hours shall be prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

Source: S.L. 1979, ch. 198, § 1.

OHIO

Applicable laws

§ 2905.01 Kidnapping; felony; includes removing another from the place where found or restraining another of his liberty by any person by any means in case of a victim under 13.

§ 2905.02 Abduction; felony.

§ 2905.03 Unlawful restraint; misdemeanor.

§ 2905.04 Child stealing; felony if committed by person other than relative or if relative removes child under 14 from state, misdemeanor in other cases. Affirmative defense that conduct was necessary to preserve child's health or welfare.

§ 2919.23 Interference with custody; misdemeanor of third degree.

§ 2905.04 Child stealing.

(A) No person, by any means, and with purpose to withhold a child under the age of fourteen or mentally incompetent from the legal custody of his parent, guardian, or custodian, shall remove such child from the place where he is found.

(B) It is an affirmative defense to a charge under this section that the actor reasonably believed that his conduct was necessary to preserve the child's health or welfare.

(C) Whoever violates this section is guilty of child stealing, a felony of the second degree. If the offender is a natural or adoptive parent, or a stepparent of the child, but not entitled to legal custody of the child when the offense is committed, child stealing is a misdemeanor of the first degree unless the offender removes the child from this state, in which case child stealing is a felony of the fourth degree.

History: 134 v H 511. Eff. 1-1-74.

Committee Comment

Although this section retains the elements of the former offense of child stealing, it adds two significant features. First, it expressly provides an affirmative defense to the crime based on the actor's good faith belief that his action was necessary to preserve the child's health or welfare. Second, the section provides for a lesser penalty when the offender is a natural or adoptive parent or a step-parent of the child, but not entitled to custody.

The rationale for providing the affirmative defense is that the law ought not to unduly discourage persons from taking children away from those who otherwise have legal custody, when there are reasonable grounds to believe that such action is dictated by some danger to the child's health or welfare. If the actions of such persons are not unreasonable, and are done in good faith, then no harm has been done even though they may have been mistaken in seeing some hazard to the child.

The reason for providing a lesser penalty when the offender is a parent of the child is that the offense of child stealing as such is often committed by separated or divorced parents who take the child from the parent having custody, and in such cases there is little if any danger to the child. Under such circumstances, the offense cannot be considered as grave as when it is committed by a stranger having no claim whatever on the child. In order to permit extradition, however, the section makes the offense a felony of the lowest degree when committed by a parent who takes the child out of the state.

To a limited extent, interference with custody under section 2919.23 is a lesser included offense to this section.

Child stealing is a felony of the second degree. If the offender is a parent, adoptive parent, or stepparent not entitled to custody of the child, the offense is a misdemeanor of the first degree, unless the offender takes the child out of state, in which case the offense is a felony of the fourth degree.

§ 2919.23 Interference with custody.

(A) No person, knowing he is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor any of the following persons from his parent, guardian, or custodian:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or mentally deficient.

(B) It is an affirmative defense to a charge of enticing or taking under division (A) (1) of this section, that the actor reasonably believed that his conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under his shelter, protection, or influence.

(C) Whoever violates this section is guilty of interference with custody, a misdemeanor of the third degree.

HISTORY: 136 v H.85. Eff 11-28-75.

OKLAHOMA

Applicable laws.

21 § 741 Kidnapping; felony; consent of victim no defense if victim 12 or younger.

21 § 891 Child stealing; felony or misdemeanor.

§ 891. Child stealing - Punishment, Chpt. 35.

Whoever maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child is punishable by imprisonment in the penitentiary not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. R.L.1910, § 2435.

Historical Note

St.1890, § 2190. St.1803, § 2180; St.1903, § 2271; Comp Laws 1909, § 2373; Comp.St.1921, § 1858. Origin: Comp. Laws Dak.1887, § 6541.

OREGON

Applicable laws. (Effective 1971.)

§ 163.225 Kidnapping in second degree; felony; defense that person taken or confined is under 16 and the defendant is a relative whose sole purpose is to assume control of that person.

§ 163.235 Kidnapping in the first degree; felony.

§ 163.245 Custodial interference in the second degree; Class A misdemeanor.

§ 163.257 Custodial interference in the first degree; Class C felony; covers removal of child from state or exposure of child to substantial risk of illness or injury.

163.245 Custodial interference in the second degree. (1) A person commits the crime of custodial interference in the second degree if, knowing or having reason to know that he has no legal right to do so, he takes entices or keeps a person from his lawful custodian with intent to hold him permanently or for a protracted period.

(2) Custodial interference in the second degree is a Class A misdmeanor. (1971 c.743 s.100)

163.250 (Repealed by 1971 c.743 s.432)

163.255(1955 c530 s1; repealed by 1971 c743 s.432)

163.257 Custodial interference in the first degree. (1) A person commits the crime of custodial interference in the first degree if he violates ORS 163.245 and:

(a) Causes the person taken, enticed or kept from his lawful custodian to be removed from the state; or

(b) Exposes that person to a substantial risk of illness or physical injury.

(2) Custodial interference in the first degree is a Class C felony.

(1971 c.743 s.101)

163.260(Amended by 1955 c.366 s.1; repealed by 1971 c.743 s.432)

163.270(Amended by 1955 c.371 s.1; 1957 c.640 s.1; repealed by 1971 c.743 s.432)

PENNSYLVANIA

Applicable laws (Title 18, effective June 6, 1973)
§ 2901 Kidnapping; felony; covers unlawful removal or confinement of person under 14 if accomplished without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.
§ 2902 Felonious restraint; misdemeanor of first degree.
§ 2903 False imprisonment; misdemeanor of second degree.
§ 2904 Interference with custody of children; misdemeanor in second degree unless actor (other than parent) knew that conduct would put child in danger in which case it is a misdemeanor in first degree. Three defenses provided.

§ 2904. Interference with custody of children.
(a) Offense defined.--A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so.
(b) Defenses.--It is a defense that:
(1) the actor believed that his action was necessary to preserve the child from danger to its welfare; or
(2) the child, being at the time not less than 14 years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child; or
(3) the actor is the child's parent or guardian or other lawful custodian and is not acting contrary to an order entered by a court of competent jurisdiction.
(c) Grading.--The offense is a misdemeanor of the second degree unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the safety of the child, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a misdemeanor of the first degree.
1972, Dec.6, P.L.---,No. 334 § 1, eff. June 6, 1973.

PUERTO RICO

Applicable laws (Title 33; effective 1974; from 1979 Supplement to Laws of Puerto Rico.)
§ 4171 Restraint of liberty; misdemeanor.
§ 4178 Kidnapping; felony.
§ 4179 Kidnapping outside Puerto Rico and bringing or sending victim into Puerto Rico; felony.
No specific child abduction or restraint law.

RHODE ISLAND

Applicable laws:
§ 11-26-1 Kidnapping; felony.
§ 11-26-1.1 Childsnatching; felony, removal or detention of child under 18 outside the state with intent to violate R.I. custody decree.

11.26.1.1. Childsnatching. -- Any person who intentionally removes, causes the removal of, or detains any child under the age of eighteen (18) years outside of the state of Rhode Island with intent to deny another person's right of custody under an existing decree or order of Rhode Island Family Court shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment for a term not more than two (2) years.
History of Section.
As enacted by P.L. 1980, ch. 217, § 1.

SOUTH CAROLINA

Applicable laws:

§ 16-3-910 Parents expressly exempted from kidnapping statute.
§ 16-17-495 Transporting or keeping child under 16 outside State with intent to violate custody order; felony; if child returned to jurisdiction of court within 7 days of his removal from State, punishable as misdemeanor. (Effective 1976.)

§ 16-17-495 Transporting child under sixteen years of age outside State with intent to violate a custody order.

When any court of competent jurisdiction in this State shall have awarded custody of a child under the age of sixteen years, it shall be a felony for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within this State to any point outside the limits of this State or to keep any such child outside the limits of this State. Such crime shall be punishable by a fine in the discretion of the court or by imprisonment in the State's prison for not more than three years, in the discretion of the court, or by both such fine and imprisonment; provided, that keeping a child outside the limits of the State in violation of a court order for a period in excess of seventy-two hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking; provided, further, that if the person violating the provisions of this section returns the child to the jurisdiction of the court issuing such order within seven days after so removing the child from this State, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided herein.
HISTORY: 1976 Act No. 592.

SOUTH DAKOTA

Applicable laws:

§ 22-19-1 Kidnapping; felony; Parents of unmarried minors excepted.
§ 22-19-7 Taking away or concealing child under 12; felony or misdemeanor.
§ 22-19-9 Taking away or keeping of unmarried minor in violation of custody or visitation rights specified in custody determination; Class 1 misdemeanor.
§ 22-19-10 Removal of child from state in violation of § 22-19-9, Class 6 felony.
§ 22-19-11 Failure to report offense within 90 days as complete defense to prosecution under § 22-19-9 and § 22-19-10.

22.19.7 Taking away or concealing child under twelve--Punishment.--Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state penitentiary not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.
Source: PenC 1877, § 340; CL 1887, § 6541; RPenC 1903, § 345; RC 1919, § 4119; SDC 1939, § 13.2707. See Cal Pen Code, § 278.

22.19.9 Taking, enticing away or keeping of unmarried minor child by parent. Any parent who takes, entices away or keeps his unmarried minor child from the custody or visitation of the other parent, or any other person having lawful custody or right of visitation, in violation of a custody or visitation determination entitled to enforcement by the courts of this state, without prior consent is guilty of a Class 1 misdemeanor.
Amended SL 1980, ch 174, § 1.

22.19.10 Removal of child from state. Any parent who violates § 22.19.9 and causes the unmarried minor child taken, enticed or kept from his lawful custodian to be removed from the state is guilty of a Class 6 felony.
Enacted SL 1980, ch 174, § 2.

22.19.11 Failure to report offense as complete defense. It is a complete defense to a prosecution for a violation of §§ 22.19.9 and 22.19.10 that the person having lawful custody or right of visitation failed to report the offense to law enforcement authorities within ninety days of the offense.
Enacted SL 1980, ch 174, § 3.

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TENNESSEE

Applicable laws.

§ 39-2601 Kidnapping; felony.
§ 39 2602 Kidnapping children under 18; felony.
§ 39-2603 Aggravated kidnapping - Class X felony; includes kidnapping of child under 13 but any seizure or kidnapping of a child by a parent shall not be considered a class X felony. (Effective 1979).

39-2602. Kidnapping children under sixteen -- Penalty. -- Every person who unlawfully takes or decoys away any child under the age of sixteen (16) years, with intent to detain or conceal such child from its parents, guardian, or other person having the lawful charge of such child, shall, on conviction, be imprisoned in the penitentiary not less than one (1) year nor more than five (5) years. (Code 1858, § 4519; Shan., § 6465; mod. Code 1932, § 10793.)

1. Father as Kidnapper.

Conviction of father of kidnapping child from mother to whom custody had been awarded in her ex parte divorce proceedings was not sustained by evidence which failed to show that he knew of such award of custody. Hicks v. State (1928), 158 Tenn. 204, 12 S.W. (2d) 385.

TEXAS

Applicable laws.

§ 20.02 False imprisonment; misdemeanor unless victim recklessly exposed to substantial risk of bodily injury, in which case it is a felony; affirmative defense that actor was relative of child under 14 and sole intent was to assume lawful control of child.

§ 20.03 Kidnapping; felony; affirmative defense that abduction not coupled with intent to use or threaten use of force, actor was relative, and sole intent was to assume lawful control of the victim.

§ 25.04 Aggravated kidnapping; felony. No affirmative defense.

§ 2503. Interference with Child Custody; felony of third degree. (Title 6) covers taking or retaining child out of state. Defense specified.

§ 25.04 Enticing a child; Class B misdemeanor; (Title 6).

§ 2503 Interference with Child Custody.

(a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

(1) knows that his taking or retention violates a temporary or permanent judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction and knows that a suit for divorce, or a civil suit or application for habeas corpus to dispose of the child's custody has been filed.

(b) It is a defense to prosecution under Subsection (a)(2) of this section that the actor returned the child to this state within seven days after the date of the commission of the offense.

(c) An offense under this section is a felony of the third degree.

PRACTICE COMMENTARY
By Seth S. Search III and James R. Patterson of the
Austin Bar

This section adds a new offense to Texas criminal jurisprudence, one designed primarily to deal with the parental kidnapper but formulated broadly enough to cover anyone knowingly interfering with a court's custodial jurisdiction over children. Section 25.03 replaces a variety of offenses in the prior law, all aimed at least in part at preventing interference with a custodial relationship, but none adequate to deal with the parental kidnapper.

Section 25.03 prohibits both taking and retaining a child outside the state either in violation of a custody award, Subsection (a)(1), or to defeat the court's jurisdiction in a custody case, Subsection (a)(2). The custody award need not originate with a Texas court to come within the section; if suit is filed in this state to enforce a California custody judgment, for example, the non custodial parent's taking the child out of Texas violates Subsection (a)(2) if the parent knows the suit has been filed. Age 18 is used for the offense because under Texas law parental custody rights in a child usually terminate at that age.

Subsection (b) highlights the chief objective of this offense: to encourage the child's return to the jurisdiction of the Texas court whose contempt power can then be used to enforce its custody award.

The offense is graded a felony to assist in invocation of the extradition and federal fugitive felon provisions.

§ 25.04. Enticing a Child

(a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor.

COMMENTARY on § 20.02 and § 20.03

The affirmative defense protects the so-called parental kidnapper, who is the object of a separate, felony-grade offense defined in Section 25.03 (interference with child custody). Unlike that section, which uses age 18 for definition purposes because custody rights usually terminate at that age (see Family Code §§ 11.01, 12.04), Subsection (b) uses age 14, a probable confusion with the age of consent for certain defensive purposes in the sexual offenses chapter (see Sections 21.09, 21.10). A more serious problem with the subsection is its ambiguity: the incomplete definition of "relative" (defined in Section 20.01(3)) and the vagueness of the term "lawful control." Because it is an affirmative defense, however, ambiguity is the defendant's problem, since he must prove its application by a preponderance of the evidence.

UTAH

Applicable laws.

§ 76-5-301 Kidnapping; felony

§ 76-5-302 Aggravated kidnapping; felony; a detention or moving is deemed to be by force, threat or deceit if victim is under 16 and is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting as parent.

§ 76-5-303 Custodial interference; Class A misdemeanor unless child is removed from state in which case it is a felony.

76-5-303. Custodial interference.--(1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, he or she takes, entices, conceals, or detains a child under the age of sixteen from his or her parent, guardian, or other lawful custodian

(a) Knowing he or she has no legal right to do so; and

(b) With intent to hold the child for a period substantially longer than the visitation or custody period previously awarded by a court of competent jurisdiction.

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical custody of a child under the age of sixteen pursuant to a judicial award of any court or competent jurisdiction which grants to another person visitation or custody rights, and without good cause he or she conceals or detains the child with intent to deprive the other person of his or her lawful visitation or custody rights.

(3) A person is guilty of custodial interference if without good cause he or she takes, entices, conceals, or detains an incompetent or other person under the age of sixteen who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing he or she has no legal right to do so.

(4) Custodial interference is a class A misdemeanor unless the child is removed and taken from one state to another, in which case it is a felony of the third degree.

History: C. 1953, 76-5-303, enacted by L. 1973, ch. 196, § 76-5-303; L. 1979, ch. 70, § 1.

Compiler's Notes. The 1979 amendment inserted "or she" and "or her" throughout subsecs. (1) to (3); and increased the penalty for custodial interference by rewriting subsec. (4) which previously read: "Custodial interference is a class B misdemeanor."

VERMONT

Applicable laws:

§ 2401 Kidnapping, felony (1971).
§ 2402 Kidnapping child under 16; felony offense committed regardless of child's consent.
§ 2451 Custodial interference; felony; defense specified.

§ 2451 Custodial interference.

(a) A person commits custodial interference by taking, enticing or keeping a child from the child's lawful custodian, knowingly, without a legal right to do so, when the person is a relative of the child and the child is less than eighteen years old.

(b) A person who commits custodial interference shall be imprisoned not more than five years or fined not more than $5,000.00, or both.

(c) It shall be a defense to a charge of keeping a child from the child's lawful custodian that the person charged with the offense was acting in good faith to protect the child from real and imminent physical danger. Evidence of good faith shall include, but is not limited to, the filing of a non-frivolous petition documenting that danger and seeking to modify the custodial decree in a Vermont court of competent jurisdiction. This petition must be filed within 72 hours of the termination of visitation rights. This defense shall not be available if the person charged with the offense has left the state with the child.--Added 1979, No. 149 (Adj. Sess.), § 1, eff. April 24, 1980.

VIRGINIA

Applicable laws:

§ 18.2-47 Abduction and kidnapping; if committed by parent and punishable as contempt in the pending proceeding, Class 1 misdemeanor unless child removed from state, in which case it is a Class 6 felony.
§ 18.2-49 Threatening, attempting, or assisting in such abduction; Class 5 felony.
§ 18.2-50 Disclosure of information and assistance to law enforcement officers required by members of immediate family; Class 2 misdemeanor.

§ 18.2-47. Abduction and kidnapping defined; punishment. -- Any person, who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secrets the person of another with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code.

Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony, provided, however, that such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. Provided further, however, that such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent shall be a Class 6 felony in addition to being punishable as contempt of court. (Code 1950, §§ 18.1-36, 18.1-37; 1960, c. 358; 1975, cc. 14, 15; 1979, c.663; 1980, c.506.)

§ 18.2-50. Disclosure of information and assistance to law enforcement officers required. --Whenever it is brought to the attention of the members of the immediate family of any person that such person has been abducted, or that threats or attempts have been made to abduct any such persons, such members shall make immediate report thereof to the police or other law enforcement officers of the county, city or town where such person resides, and shall render all such possible assistance to such officers in the capture and conviction of the person or persons guilty of the alleged offense. Any person violating any of the provisions of this section shall be guilty of a Class 2 misdemeanor. (Code 1950, § 18.1-40; 1960, c. 358; 1975, cc. 14, 15.)

VIRGIN ISLANDS

Applicable laws:
V.I.C. § 1051 False imprisonment and kidnapping, not applicable in any case when a parent abducts his own child. (1974)
No specific child abduction or restraint law.

WASHINGTON

Applicable laws:
§ 9A.40.020 Kidnapping in the first degree; felony.
§ 9A.40.030 Kidnapping in second degree (lesser offense); felony; defense that abduction did not include the use of, intent to use, or threat to use, deadly force and actor is relative of person abducted and sole intent is to assume custody of that person. Provides that nothing in this defense constitutes a defense to, nor precludes conviction of any other crime.
§ 9A.40.040 Unlawful imprisonment; felony.
§ 9A.40.050 Custodial interference; gross misdemeanor.

§ 9A.40.050 Custodial interference. (1) A person is guilty of custodial interference if, knowing that he has no legal right to do so, he takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution.
(2) Custodial interference is a gross misdemeanor.

LEGISLATIVE HISTORY
Enacted Laws 1st Ex Sess 1975 ch 260 § 9A.40.050.

WEST VIRGINIA

Applicable laws:
§ 61-2-14 Kidnapping or concealing child; felony; mothers and fathers expressly excluded.
§ 61-2-14a Kidnapping for extortion, etc.; felony.
No specific child abduction or restraint law.

WISCONSIN

Applicable laws (Title 45)
§ 940.31 Kidnapping; felony; 19-5 Attorney General's opinion excluded mother from purview of statute. A mother having temporary lawful custody of child by virtue of divorce decree was not guilty of kidnapping when she took child out of state and refused to surrender it to custody of father who was entitled to permanent custody under the decree. 4 Op.Atty. Gen. 802 (1915)
§ 940.32 Abduction of child under 18 from his home or custody of his parent or guardian for unlawful purpose; felony.
§ 946.71 Interference with custody of child; Class E felony.
§ 946.715 Interference by parent with parental rights of other parent; Class E felony; under specified circumstances, no violation committed.

§ 946.71 Interference with custody of child.
Except as provided under ch. 48, whoever intentionally does any of the following is guilty of a Class E felony:
(1) Interferes with the custody of any child under the age of 18 who has been committed or whose legal custody or guardianship has been transferred under ch. 48 to the department of health and social services or to any person, county agency or licensed child welfare agency.
(2) Entices away or takes away any child under the age of 18 from the parent or other person having legal custody under an order of judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus with intent to take the child out of the state for the purpose of depriving the parent or other person of the custody of the child without the consent of such parent or other person, unless the court which awarded custody has consented that the child be taken out of the state by the person who so takes the child. The fact that joint custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this subsection.

(3) Entices away, takes away or withholds for more than 12 hours beyond the court-approved visitation period any child under the age of 14 from a parent or other person having legal custody under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus without the consent of the legal custodian, unless a court has entered an order authorizing the taking or withholding.

(4) Entices away, takes away or withholds for more than 12 hours any child under the age of 14 from the parents, or the child's mother in the case of a child born out of wedlock and not subsequently legitimated, without the consent of the parents or the mother, unless custody has been granted by court order to the person enticing, taking or withholding the child.

Source: L. 1967, c. 226, § 31, eff. Dec. 26, 1967.
L. 1971, c. 164, § 89, eff. Dec. 31, 1971.
L. 1977, c. 173, § 150, eff. June 1, 1977.
L. 1977, c. 161, §§ 1, 2, eff. Nov. 17, 1977
L. 1977, c. 418, § 928(18)(b), eff. May 19, 1978
L. 1979, c. 196, § 47, eff. Aug. 1, 1980.

Applicability. L. 1979, c. 196, § 49, provides:

"This act applies to all actions affecting marriage and to all motions concerning actions affecting marriage which are commenced or filed on or after the effective date of this act, including motions or actions for modification or enforcement of orders entered prior to the effective date of this act." Cross References - Felony classifications, see § 939.50.

946.715 Interference by parent with parental rights of other parent.

(1) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

(a) Intentionally conceals a minor child from the child's other parent;

(b) After being served with process in an action affecting marriage but prior to the issuance of a temporary or final order determining custody rights to a minor child, takes or entices the child outside of this state for the purpose of depriving the other parent of physical custody as defined in s. 822.-02(9); or

(c) After issuance of a temporary or final order specifying joint custody rights, takes or tentices a child under the age of 14 from the other parent in violation of the custody order.

(2) No person violates sub.(1) if the action:

(a) Is taken to protect the child from imminent physical harm;

(b) Is taken by a parent fleeing from imminent physical harm to himself or herself;

(c) Is consented to by the other parent; or

(d) Is otherwise authorized by law.

Source: L.1979, c. 196, § 48 eff. Aug. 1, 1980. Applicability. L. 1979, c.196, § 49, provides: "This act applies to all actions affecting marriage and to all motions concerning actions affecting marriage which are commenced or filed on or after the effective date of this act, including motions or actions for modification or enforcement of orders entered prior to the effective date of this act."

WYOMING

§ 6-4-201 Kidnapping; felony.
§ 6-4-203 Involuntary transfer of physical custody of child under 14; felony.
§ 6-4-204 Concealment and harboring; felony.
§ 6-4-205 Abduction for profit; felony.

§ 6-4-203 Involuntary transfer of physical custody of child.

When any parent, living apart from the other parent who by express agreement or court order has the physical custody or control of a child under the age of fourteen (14) years, takes, leads, carries, decoys or entices away the child with the intent to cause a change in the physical custody of the child without the consent of the parent or guardian having physical custody or control of the child or without authorization to do so by a court having appropriate jurisdiction, is guilty of a felony and shall, upon conviction, be imprisoned in the state penitentiary for not to exceed one year, fined not more than $500 or both. (Effective May 20, 1981.)

§ 6-4-204. Same; concealment and harboring.

Whoever violates the provisions of W.S. 6-61.1 (§ 6-4-203) and knowingly and intentionally conceals and harbors any child so led, taken, carried, decoyed, or enticed away, or refuses to reveal the location of the child to the parent or guardian formerly having physical custody, upon conviction thereof, may be imprisoned in the state penitentiary for a period of not exceeding *two (2) years and fined not more than one thousand dollars* ($1,000.00). (Laws 1977, ch. 92, effective May 28, 1977.

§ 6-4-205. Same; abduction for profit.

Whoever for payment or promise of payment enters into an agreement, confederation or conspiracy to violate the provisions of W.S. 6-61.1 (§ 6-4-203) or 6.61.2 (§ 6-4-204), upon conviction thereof, may be imprisoned in the state penitentiary for a period not exceeding ten (10) years and fined not more than ten thousand dollars ($10,000.00). (Laws 1977, ch. 92, § 1.)

FEDERAL LAW Section 10, Pub. L. 96-611 (94 Stat.3573), effective December 28, 1980.
18 U.S.C. 1073
18 U.S.C. 1201, Kidnapping,felony; excepts parents from statute.

PARENTAL KIDNAPING

Sec. 10 (a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302, the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable State felony statutes.

(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section (and once every 6 months during the 3-year period following such 120 day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include -

(1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code, in cases involving parental kidnaping;

(2) data relating to the number of complaints issued in such cases; and

(3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent.

(18 U.S.C. 1073 note, 42 U.S.C. 602.)

§ 1073. Flight to avoid prosecution or giving testimony.

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

June 25, 1948, c. 645, 62 Stat. 755; Apr. 6, 1956, c.177, § 1, 70 Stat. 100; Oct. 4, 1961, Pub.L. 87-368, 75 Stat. 795; Oct. 15, 1970, Pub. L. 91-452, Title III, § 302, 84 Stat. 932.

Mr. HUGHES. Before I recognize my friend and colleague from Colorado, Pat Schroeder, to introduce Kristine Uhlman, I would like prosecutors, Chris Foley, Douglas Cheshire, and John Topolnicki, to come forward to counsel table.

Doug Cheshire was elected State attorney for the 18th Judicial Circuit of Florida in 1976. This includes Brevard and Seminole Counties and is the home of the Kennedy Space Center and many well known tourist attractions.

He brings to the prosecutor's office a well rounded background in civil litigation and criminal defense. Mr. Cheshire is vice president and former secretary of the Florida Prosecuting Attorneys Association, and has lectured to the National District Attorneys' Association.

Chris Foley has been assistant district attorney for Milwaukee County for only 3 years, but in that time he has acquired a reputation for great expertise and dedication in the area of parental kidnaping.

He is the author of a well regarded manual for the investigation and prosecution of child snatching cases, and has lectured on this subject to the National College of District Attorneys and the Wisconsin Bar Association.

John Topolnicki is the chief deputy district attorney for the 18th Judicial District of Colorado. He has 11 years of experience in every aspect of State prosecution and has served as a faculty adviser at the National College of District Attorneys. He has lectured and led seminars in almost all aspects of criminal law and law enforcement to professional and lay organizations.

I now recognize the distinguished Congresswoman from Colorado, Pat Schroeder.

Ms. SCHROEDER. Mr. Chairman, I personally want to thank you and the members of your committee. I think having the prosecutors here makes your oversight hearing very real.

We are honored today by a woman who really I think puts a human dimension on this: Her name is Kristine Uhlman.

Let me give you a brief statement of her case, since you are going to hear much more about it:

One, her children were in Colorado; they were kidnaped and taken back to Saudi Arabia. There is an excellent summary of the incident, from the kidnaping until they left the country, prepared by her attorney. I hope the committee looks at it, because it really shows that if the Federal Government had gotten involved, it might have been able to have prevented this tragedy; maybe the children would not have been taken to Saudi Arabia. Now the case is much more difficult by their having left this country.

I guess I have two observations: as an attorney in the practice of law I have always been aware of a certain prejudice against attorneys who practice family law; and some of this carries over at Justice and the FBI—family law, there's no prestige; and I think that's found in a lot of places.

I also think an aspect of this case is that it occurred 2,000 miles away from Washington. As you read this report of the events, you will observe that a lot of time was spent between Washington and Denver trying to get a signoff on any action. And by the time something came down, it was too late, no matter what happens.

This is really a great human tragedy, and I am very honored that Ms. Uhlman is here. We hope it will have a happy ending. And I thank you for allowing her to sit with the panel, because I think it takes the issue out of the esoteric level and brings it right down to earth. I thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Pat; and welcome, Ms. Uhlman.

I am sorry this has been so tragic for you, but I am happy that you are willing to share your experiences with us this afternoon and to give to us the human dimension of the problem. We appreciate it.

Ms. UHLMAN. Thank you.

TESTIMONY OF DOUGLAS CHESHIRE, STATE'S 18TH JUDICIAL CIRCUIT OF FLORIDA; JOHN TOPOLNICKI, CHIEF DEPUTY DISTRICT ATTORNEY, LITTLETON, COLO., ACCOMPANIED BY KRISTINE UHLMAN, PARENT OF A KIDNAPED CHILD, AURORA, COLO.; AND CHRISTOPHER FOLEY, ASSISTANT DISTRICT ATTORNEY, MILWAUKEE, WIS.

Mr. HUGHES. Why don't we begin with Mr. Cheshire?

We have your statements for the record, and we would appreciate it if you would summarize for the record and then we move to questions.

Mr. CHESHIRE. I think I can say without contradiction I am the only elected State official in this room and who has walked many a mile in these prosecutor's shoes in these cases. I don't know whether I did a good job or a bad job of prosecuting, but it ended up in a book [indicating volume]. And I happened to bring the file with me. And I am sure there's going to be things in here; it's called Child Snatched. And I personally prosecuted the case, and I personally had my head handed to me in the courtroom.

So I have multiple experience to go with it. I have my penpal correspondence signed by Senator Hawkins. I have another file in my office right now.

If you do a vigorous job of prosecuting, you are going to get all kind of letters postmarked Washington, both from the House and from the Senate. But I dare say, I expect the Senators in Florida were probably first and foremost in getting our Florida law changed. We had a major obstacle which by virtue of a felony filibuster we were able to grease the wheel that was squeaking the loudest.

I am not here to ask the Department of Justice or the FBI to do my job. That is the last thing on my mind.

I happened to receive today some correspondence that was relayed to all U.S. attorneys. And I am going to take this back home to my circuit, and I am going to Xerox it and transmit it to all 20 State attorneys in the State of Florida, because it has an interesting wealth of information in it, which I admit I found out today, compliments of your legal counsel, on the position of the U.S. attorney.

One sentence in here I find that I must object to strenuously, and I would like to quote it. It is on page 5. And I understand this has been disseminated.

It has been our experience that State prosecutors often will charge an abducting parent with a felony as an accommodation to the victim's parent with no real intention of prosecuting the abducting parent.

And I do not believe that a State attorney who is elected and who posts his oath of office in good conscience should be and could be accused of that statement.

If the law is there, if the elements of the crime are there, if the facts are there, I think any prosecutor will sign the criminal information or seek the indictment as necessary. But to suggest that prosecutors "accommodate" a person simply because they are involved in a child snatching case, I believe is categorizing prosecutors as passing the buck; and that is not the case.

I have a solution:

I believe that we need the investigative arm of the Bureau to locate these people.

In the case that I now have before me—we have reason to believe that that man is in Texas. We have done everything possible to locate that man. But as a prosecutor in the State of Florida, I do not have the resources or the manpower to send my 13 investigators to the State of Texas to find this individual.

It will take generally a unified and concerted effort. We think the man is in San Antonio, but he may be in San Angelo—we can't ask the State's attorney and those particular D.A.'s out there to do a "corrugated" or a disjointed investigation. Whereas, one FBI field office in the State of Texas would have the capability of subpenaing the people, obtaining the tolls from the telephone company, and locating the person.

Now, if you will give me nationwide jurisdiction, I will be more than happy to assume all responsibilities for child snatching cases in Florida; but without the expertise and what I call the heavy hand of the FBI, we are stymied.

Mr. HUGHES. You could merge with the Department of Justice, as one agency, and solve all the problems. [Laughter.]

Mr. CHESHIRE. Would you accept "no comment," sir? [Laughter.]

No good prosecutor would ever do that; we might imbibe with one, but——

That would be my recommendation. And I have no qualms or equivocations to telling my friends in the Department of Justice that. It is probably at its pitch right now, and there is an old saying that even a drowning man will grab a sword. There are a lot of women out there, and men, that are grabbing for attention; and they are going down for the third time with the Federal Parental Kidnaping Act.

Right now it is nonexistent as far as enforcement goes.

And sitting here at this table I have a copy of a letter of my last refusal which I gave a copy to counsel to distribute to you. I have had the distinction sometimes of having the Bureau work with me, but of late, and since this act has passed, I've had no help at all.

And I stand on their reasons. Please don't ask me to cite them; I just refer to them.

I would be glad to answer any questions you have.

Mr. HUGHES. Why don't we complete the testimony first?

Mr. CHESHIRE. Fine.

Mr. HUGHES. Mr. Topolnicki?

Mr. TOPOLNICKI. Mr. Chairman, members of the subcommittee, my name is John Topolnicki. I am a chief deputy district attorney in Arapahoe County in the State of Colorado, and I am a member of the 18th Judicial District there.

We actually handle four different counties, three of which are rural, and one of which is an urban county, a suburb of Denver, Colo. The total population is about 375,000, and annually I participate directly in my office in handling approximately 25 parental kidnaping cases. And this is active involvement. We have more than that reported, but these are the ones we get right down to the nitty-gritty on, and try to do something about.

I will summarize my testimony as submitted, and highlight a little bit of that testimony.

First of all I outlined in the testimony the concerns that most public officials and agencies have when you contact them and ask for assistance. Probably the greatest problem that I face in handling these cases is getting somebody to pay attention to the issue; and then, once you get them paying attention, getting them to act.

I have taken the liberty of explaining what I think should be the four important criteria for the Department of Justice.

As chief deputy in my boss' office, I am well aware that there has to be enforcement discretion in a prosecutor's office. I don't fault the Department of Justice for exercising discretion.

I believe that if they just reviewed these cases carefully, that the system probably would be used, particularly in those areas where the State authorities have inadequate resources to handle the cases, or where there's inadequate experience on how to handle the cases.

I think my chief concern is that, although I agree they should have discretion, they exercise it too narrowly. The policy guidelines only cover those situations where children are endangered or where they are going to be abused and neglected.

I can't help but emphasize the observation of the prior testimony that it looks like the Parental Kidnaping Prevention Act of 1980 has become the Child Abuse and Neglect Prevention Act of 1980.

I am very disturbed about the fact that when a Federal agency of the magnitude of the Department of Justice establishes such a policy, we might well remove the word "prevention" from the act itself. That title implies that we are looking for some type of deterrent.

This crime is widely publicized on national networks as well as locally and the parents are told weekly how easy it is to get away with this crime.

Then when the message to all people in the United States and to all those people from throughout the world who come into our country—as happened in Kristine Uhlman's case—is that there will be no response from the U.S. Government, unless we can show that they are abusing or neglecting that child or endangering that child.

In fact, you can honestly say that there's not one scintilla of deterrence when you have that policy in existence; and in fact, it is an encouragement for that activity to go forward.

I am frustrated by the fact that if parents who care very much about their children can't get the concentration and active involve-

ment of local officials, they are left with the sole remedy of trying to locate the children themselves. If they are so lucky as to be able to do that they consider the possibility of rekidnaping them.

That scares me to death. That is dangerous for the children. It is dangerous to the parents, and it is dangerous to the general public.

What we are saying when we don't have enforcement, is you have to do self-enforcement. That brings out a whole lot of problems that I think we should be able to avoid if the Department of Justice would just expand their criteria.

Now, I will outline the criteria that I think are important:

No. 1, is the one they already have. If the children are endangered, or there is abuse or neglect, there should be a policy that the FBI should enter and process a warrant.

If you can show an international flight, it is very important—we have to say to the rest of the world: "Look, you can't come into the United States and do this; there is going to be something done about it if you try to; and if you are successful in doing it, we are not going to ignore the problem."

Today, we say to the whole world by this policy we are going to ignore the problem as long as you don't abuse and neglect the children.

Third, I think the FBI needs to become involved when State officials can demonstrate that they have made a legitimate attempt to locate these children, and have exhausted their resources. If they can't find and apprehend these offending parents, and recover the children, then we need Federal help.

We heard the testimony that a Senator's name has been run at the Parent Locator Service and if reveals address unknown but that does not say that any particular parent won't trigger the system. And if we can get 10, 15, 20, or more a year, then the Parent Locator Service is at least that valuable.

The fourth situation is when local officials refuse to act.

I have been frustrated by that on several occasions. I should state that our office, until the Kristine Uhlman case, has had a 100 percent return of children. There hasn't been one case that we haven't been successfully able to resolve.

Now, you hear a great deal when we call the U.S. attorney's office about what is our genuine intent to prosecute? And I want to talk about that for just a minute.

I didn't mention that in my written testimony, and that seems to be an issue at which a lot of people are looking. And I think that question needs to be meaningfully answered.

My boss, the district attorney in my county, would not tolerate anything else, but a candid and honest representation to the U.S. attorney's office about the facts of each and every case.

He would not tolerate an indiscriminate filing of criminal charges, for no other purpose but to negotiate the return of the children.

Yet the thing that you constantly hear is that we are trying to enforce custody orders.

Now, that is very disturbing: Trying to enforce custody orders seems to imply that we are doing something improper here, or that this is a crime between parents.

This is not a crime between parents. This is a crime against children.

I think we have to emphasize that. It's the kids who are endangered. They are the ones who we are worried about. They are the ones who are being pulled back and forth.

The marriage has already broken up. The adults have their own problems, and should be able to handle them. And I wish we would get away from that—all this time emphasizing that we are not going to get involved in custody suits. That is not what we are talking about. That is not the involvement we have here.

We have a problem with children—who are emotionally injured and sometimes actually endangered by this type of activity. And I think that is very, very criminal. And I think that we need to treat that; that is the problem.

The refusal of local officials to act sometimes is because of their own personal philosophy and attitudes. It is very, very frustrating. You get hold of the officials and they say, "we won't act."

What do you do then?

If you have interstate flight, you can bring in the FBI; and you can tell the local agents.

I have a hard time believing that the FBI is not adequately staffed enough to go out and enforce the act of 1980 and apprehend the parent.

Now, when we file charges, we mean it. In all the cases we have handled in our office—and I am the one that's handled almost every one of them—there are only three cases in which we ever filed State charges.

I freely admit that we negotiate with the parents all the time if we can locate them. We won't file charges if they return the children.

That is the same thing that the proposed legislation talks about.

I think that you must have had a lot of testimony about that prior to passing the Parental Kidnaping Prevention Act. I think everybody is aware of that. I think Congress was aware of that when it passed the act.

I think that is a legitimate concern, that you need to be able to negotiate.

But when we do file charges, we do mean it. And we have filed charges, so far as I know, in three cases.

Now you say, "how many, Mr. Topolnicki, have you ever prosecuted?"

Well, we haven't prosecuted any. And there is a good reason for that. Because we were blackmailed to drop the charges.

Now, you see it is very bold for a prosecutor to say, "Once I filed charges, I mean it; and we mean to go to court; and we are going to convict." That sounds very good. And I suppose it comes across very well to the public.

But then you have to look the parent in the eye, a custodial parent who may never see her children again, or his children again; and they say, "Oh, you want to apply the letter of the law? When do I get to see my kid? You are telling me that you can negotiate to return my children, so I can love and nurture them? And you are going to apply the letter of the law?"

I don't have the intestinal fortitude to look those parents in the face and say, "Yes, we are going to apply the letter. You will never see your children again, but if we can get this defendant parent back, we will prosecute."

Those are real hard practical things that prosecutors have to be aware of. And I find that most prosecutors are very, very responsible, and will not abuse the Federal process.

I think it is interesting to note, and I don't know if it is fair of me to do this, but I have read Mr. Lippe's prepared testimony. And it seems to indicate to me that of all of the requests—and I understand a lot of them weren't legitimate; as he outlines in his testimony—they authorized the Federal involvement in only 16 percent of all the reported cases to the FBI.

I have heard figures like 100,000 cases. But how many were actually reported to the FBI? He seems to indicate some 470. We are asked, "Are there sufficient resources?" It seems to me that there would be.

I don't know what else I can say. It is in my testimony. I have heard a lot of distinguished people testify here today. This is an important problem. And we need Federal involvement.

I have only requested FBI assistance three times, on three occasions; and every time we have been turned down.

Mr. HUGHES. Thank you, Mr. Topolnicki.

Ms. Uhlman, I wonder if perhaps you would share with us your own personal experience involving your children?

Ms. UHLMAN. When I came to Colorado, I filed for temporary custody of my children with the intent of establishing residence before I filed for divorce from my husband.

Mr. HUGHES. Where was "home" before that?

Ms. UHLMAN. Saudi Arabia.

On Friday, September 11, my husband and several other men kidnaped my children, forcibly, from the front steps of my home in Colorado.

I believe if the FBI and the Federal people had immediately responded to my cry for help, he may have been stopped before he went into Saudi Arabia.

I was told I had to prove there would be possible harm, psychological or bodily, to my children before they could become involved.

I said, "This is their father. I doubt that he would do them physical harm." But the fact that they were grabbed and taken forcibly, kicking and screaming—I believe that is evidence of mental harm.

The fact that my children are now in a foreign country, where I do not have access to them; I cannot go to my children—I believe that is psychological harm to my children.

Mr. HUGHES. Can you tell us the names and ages of your children?

Ms. UHLMAN. My daughter turned 4 on September 8, Mr. Hughes. Her name is Maisoon Mustafa. She was born in Columbus, Ohio.

My son, Hani Mustafa will be 3 November 12; he was born in Saratoga, Calif.

They carried U.S. passports; they are American citizens. They are American children

Mr. HUGHES. Is your husband a Saudi Arabian?

Ms. UHLMAN. My husband is a Saudi Arabian citizen. He is a foreign national who came to the United States, abducted American children, and took them out of the country.

The fact that the Federal Government will not get involved means that my husband now may continue to come and go in the United States without any problem. All he has to do is avoid the State of Colorado.

My children are inaccessible to me in Saudi Arabia. Yet my husband has access to the United States.

Mr. HUGHES. And what date was this, again?

Ms. UHLMAN. This was September 11, 2 weeks ago.

Mr. HUGHES. Have you had any contact with your children since?

Ms. UHLMAN. I have not had any direct contact with my children.

Mr. HUGHES. Do you know where they are?

Ms. UHLMAN. I know they are in Saudi Arabia. I am not free to go to Saudi Arabia.

Mr. HUGHES. Were you present when the children were taken?

Ms. UHLMAN. Yes, I was.

Mr. HUGHES. This was at what location?

Ms. UHLMAN. In front of my home in Aurora, Colo. They were taken as they—they were coming down the stairs; they were going down to play with the children that lived below us. I was in the house at the time. I heard them being taken away.

Mr. HUGHES. Did you get outside after you learned that your husband——

Ms. UHLMAN. Yes. I ran out immediately, but they were gone.

Mr. HUGHES. And what did you then do, after that?

Ms. UHLMAN. Well—

Mr. HUGHES. Did you call the police?

Ms. UHLMAN. I immediately contacted the police. I contacted my lawyer. I called the FBI.

The FBI hung up on me twice; the third time they would not answer my phone call.

They hung up on me when I said, "My name is Kristine Uhlman; my children have been kidnaped. My husband—"—they hung up on me. The minute they became aware that it was a "common parental custody dispute," I was ignored.

The fact that my children were taken, my American children were taken into a foreign country, by a foreign national, I believe that necessitates the Federal Government should get involved in the situation. I cannot negotiate with my husband. I cannot bargain with him.

What I would like to do is be able to say to him is, "You may be free to enter the United States if you negotiate visitation and custody of my children."

I have nothing to bargain with. He can do what he pleases. And he can keep the kids.

Ms. SCHROEDER. Kris, does your husband have a visa?

Ms. UHLMAN. Yes, my husband travels into the United States on either a business visa or a visitor's visa, or whatever they are called. He travels on a Saudi Arabian passport.

Ms. SCHROEDER. So the Federal Government granted him a visa, but you don't have a visa to go back?

Ms. UHLMAN. Right. I can't get a visa to go into Saudi Arabia without the permission of my husband. But my husband has a visa to come to the United States, even though he has committed a crime in Colorado. And without the Federal charges, there is no way a visa can be denied to him.

Mr. HUGHES. How long after your children were removed from your possession was it that your husband departed for Saudi Arabia?

Ms. UHLMAN. I believe he departed immediately. We do not know how or when.

Mr. HUGHES. What was the amount of time involved from when the children were taken until you called the police?

Ms. UHLMAN. Approximately 3 minutes.

Mr. HUGHES. And your attorney called?

Ms. UHLMAN. Yes, right after that.

Mr. HUGHES. And when did you call the FBI?

Ms. UHLMAN. Immediately after that.

Mr. HUGHES. How many times did you call the FBI?

Ms. UHLMAN. I called the FBI a total of three times; two times they hung up on me; the third time they would not answer the phone.

Mr. HUGHES. Mr. Topolnicki, do you have something you would like to add to that?

Mr. TOPOLNICKI. I think it's important to note that when our office got involved, and when this lady's attorney got involved, that we weren't even able to get a hold of an on-duty deputy in the U.S. attorney's office.

Now, I don't know if that is a local practice in our particular jurisdiction, that they don't have on-call people on the weekends. But we are frustrated by even reaching the people.

Mr. HUGHES. When did this happen?

Mr. TOPOLNICKI. Well, this happened about 6:30 p.m., Friday night. And, of course, the time to take your kids is right before a weekend. And it's really outlined in Ben Aisenberg's written testimony there, the terrible frustration he went through in just getting in contact with people, let alone being able to make the request, and receive an answer to the request.

You know, I think we need to emphasize the fact, as was said in prior testimony, that we do a local determination about these issues; because it makes a difference in how we are going to respond. And if we have to wait days—as we did in this particular case—to even get a rejection; that, in and of itself, can hamper our investigation because you don't know: is the Federal Government going to become involved or is it not?

Mr. HUGHES. You have done a good job of outlining the crime, I just wanted to develop the circumstances surrounding the case for the record.

What I would like to do briefly, I would like to go on to our final witness; and then permit questions.

Mr. Foley? Your statement is in the record, and if you would like to summarize?

Mr. FOLEY. Thank you, Mr. Chairman.

I would like to thank the committee for the opportunity to appear and discuss this subject, which is a very important subject to the committee and Congress. And I would like perhaps to add a personal note as well, to establish that this is happening, and it is happening each and every day.

I spoke to Mr. Kastenmeier on Saturday and on Monday when I returned to Milwaukee I began the investigation of the whereabouts of a child who was snatched by a parent, a resident of his district; taken from a foster home. It is called an institutional snatch back; after custody had been transferred to the State as a result of abuse and neglect.

And, Mr. Hughes, you are from New Jersey. I converse regularly with a woman by the name of Maryann Mulkee (phonetic), from New Jersey. And New Jersey authorities are hopeless and helpless because they have a misdemeanor statute. I am doing what I can for Ms. Mulkee, who has not seen her child for approximately 6 years. This is happening every day.

I would like to move basically to where I think this committee should direct its attention: the guidelines that the Department has promulgated pursuant to the act and enactment of section 10 of Public Law 96-611.

I want to emphasize my concern and my objections to those guidelines and the underlying policies that they cite for those guidelines.

First of all, we must find independent, credible information establishing that the child is in physical danger or in danger of being seriously neglected.

I have the utmost respect for the Department of Justice and the Federal Bureau of Investigation, except in this area. I am aghast that they would simply restate a policy which has been specifically rejected by this Congress. To think that they continue to hold that policy, and ignore the authority of Congress.

Second, to get into the practicalities of dealing with these cases, the guidelines are totally impracticable. They seek independent credible information that the child is in physical danger. I think that it is without dispute that domestic violence is widely acknowledged and yet unreported from independent credible sources. When it is reported, it is often unavailable to us through State legislation intended to protect the victim and the perpetrator.

Attempting to gather that independent credible information, even if it is available, consumes precious time. And we have just heard testimony about how precious time is in these cases when the immediate issuance of a Federal warrant would perhaps stop a long-term concealment scheme in its initial stages.

Finally, and I think most importantly, the simple fact of the matter is that the factor of harm, or potential harm, is not present in an awful lot of the cases where the FBI should be involved, where there are legitimate, criminal investigations going on, and Federal investigative assistance is being denied simply on the basis of the guidelines which have been promulgated.

I would refer the committee to my written statement on the Bartell case. I will with all due respect, correct Congressman Sensenbrenner on one particular concerning the case he mentioned; that was my case. Congressman Sensenbrenner is under the impression

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that Mr. Bartell agreed to return and to surrender himself and the children before the Federal warrant was withdrawn. That is not a fact. The Federal warrant was withdrawn prior his surrender to State authorities. And the Federal people were aware of that, but I am sure the committee is aware that I was not about to tell Mr. Bartell that fact while direct negotiations were going on. I would further add the fact that Mr. Bartell faced the possibility of three felony counts in the State of Wisconsin.

Now, going to the second guideline which has been promulgated pursuant to Public Law 96-611, the requirement for Criminal Division approval of UFAP in instances of parental kidnaping involving interstate or international flight. I think that there are three basic problems with that.

Ms. Hoff and I have communicated, and she has indicated some of them to you.

First of all, the requirement takes the decision from the U.S. attorney. I think the U.S. attorney is the best suited individual to determine just what the intent of the local prosecutor is. He's more accessible to the local prosecutor, and to the victim's parent.

Again, the delays occasioned by demanding communication from the local office to Washington are sometimes critical. They sometimes allow the effectuation of a long-term concealment scheme where, had there been FBI involvement in the initial stages, they would not have been able to do so.

I think the last factor, and perhaps the most important factor, is that this requirement isolates the decisionmaker from the local prosecutor and from the local parent. The local prosecutor and the parent are the individuals who are best suited to present to the local U.S. attorney or an attorney in Washington the factors which would support the FBI becoming involved.

Now, moving on to the policies which the Department cites to support these guidelines, they surprise me in constantly acknowledging continuing policies militating against entry into what are—I quote—"essentially domestic relations controversies."

I think that it is clear from Congress' enactment of Public Law 96-611 that it has specifically rejected this characterization of this type of conduct. I think that in acknowledging in a report filed with this committee on this date that this continues to be their policy, that these are essentially domestic relations controversies, the Department of Justice and the Bureau display an arrogance that is beyond my comprehension. They seek to interpose the judgment of the Bureau and the Department ahead that of this Congress which enacted Public Law 96-611, specifically section 10 of that act. They seek to interpose their judgment for an act of Congress and for the State legislatures of 39 States which have made this conduct a felony. They seek to interpose their judgment for that of a local prosecutor who has committed resources of his State, his office, to extradite that individual and prosecute him.

I am somewhat alone, but perhaps I have gotten from Mr. Topolnicki some support, for my position that there is some value in the concern of the Department and the Bureau that the manpower of the Bureau and their resources must be carefully utilized. I recognize that there is validity to that concern. I think the States must accept it is their primary responsibility to enforce these laws.

But under the Fugitive Felon Act, Bureau resources are properly utilized to assist State authorities in locating interstate or international parental kidnapers and to effectuate their arrest.

I think if the committee determines that it is proper, and I think the past performance the Department and Bureau indicates it no longer is—I think that the factors I am about to cite should be incorporated in those guidelines or at least considered.

I express this concern to the committee. I deal with these cases every day. And we have been quite successful. We have not achieved the rates that Mr. Topolnicki has achieved, but we have gotten close to 90 percent.

I think that if Congress were to mandate routine Federal involvement in interstate cases of parental kidnaping it is entirely possible that we will receive a result entirely inconsistent with that which we desire; that is, that parental kidnaping cases of whatever nature will be accorded the lowest priority by the Bureau. I think in terms of the changes that are necessary and that Congress should mandate is the language in the present guidelines that independent credible information to establish the child is in physical danger or is being neglected or abused, must be eliminated. I think that the requirement for Criminal Division authorization must be eliminated. I think the only purpose for that is frustration of congressional intent. The local U.S. attorneys are best suited to determine the propriety of issuance. I think the asserted policy militating against the issuance of UFAP because of its alleged domestic relations character cannot be tolerated by this Congress.

I think that if the Congress accepts limiting standards, local U.S. attorneys unburdened by any policies militating against issuance, and any requirements for physical danger should consider the time factor. Prompt entrance into these cases is essential if entrance is to come at all.

I think the likelihood of physical or emotional harm to the child is obviously of great importance and it is of practical importance. I think the local U.S. attorney ought to examine what investigative initiative has been undertaken by State authorities. It is our responsibility to pursue these cases and to seek Federal help only when we anticipate that we will not be able to enforce our own statutes.

I think the investigative resources available to the State should be considered.

I think the investigative activities of the parent who has been victimized should be considered. I mean that only to ask if this parent is taking a responsibility to seek out this individual and to assist State law enforcement authorities?

I think the length of time involved should be considered. I think Congressman Sensenbrenner's proposed bill does that in a very forthright and effective fashion.

I think the prospect of international flight is of prime concern, and when the likelihood of such flight is established, I think entry should be mandated.

I think that the past failure of the local prosecutor to extradite or to prosecute an individual should be considered, and the factors which caused the prosecutor not to prosecute.

I think Mr. Topolnicki has presented very forthrightly his thoughts on that.

Last, and I realize I have taken a lot of the committee's time—I ask if you would examine the factors of the three case histories I have presented. I ask the committee to examine very carefully the factors in the *Shirripa* case, which created grave concerns in my mind about the time element. If in fact Dennis Schirripa was included in one of the six or seven UFAP warrants that were issued, that have been cited to this committee by the Justice Department to support their enforcement of Public Law 96-611, section 10, the facts have been grossly misrepresented. That child was back before they took any interest in this case. I surmise from the facts available to me that the only interest that they had in Mr. Schirripa was that he was suspected of involvement in a Federal banking offense, and that they wished to use our State felony warrant to apprehend Mr. Schirripa. And I know for a fact they interviewed Mr. Schirripa after this with respect to a crime for which he was subsequently charged in the Federal courts, and has subsequently been convicted.

I submit to this committee if they did that, that is an abuse of legal process equal to that which Mr. Schmults has cited in his letter to Members of this Congress, and should not be tolerated by this committee.

Thank you.

Mr. HUGHES. How many complaints come to your office each year?

Mr. FOLEY. Mr. Chairman, between January 1980 and February 1981, I filed 119 cases, I believe. That is not to say I charged 119 parental kidnaping cases; I did not. I charged 25. We opened cases for preventive action. We never ignore a threat. We have form letters to utilize. I send out form letters. I sent them typed personally each time advising in each instance of the threat reported to us and of the criminal penalties that may be imposed if a person engages in this type of conduct.

Mr. HUGHES. How many required Federal assistance?

Mr. FOLEY. Mr. Chairman, I believe primarily my responsibility, and the local police, is to try and locate these people when interstate flight is involved; and I only go to the FBI and the Department of Justice when I feel I cannot not locate the individuals.

The three cases that I tried are the only cases that I talked to the Department of Justice about, and only because there were compelling reasons. In the *Bartell* case and the *Lopez-Medina* cases there were compelling reasons which led me to the Department of Justice and they gave me absolutely no assistance whatsoever.

Mr. HUGHES. Mr. Topolnicki, can you tell us how many complaints come to your attention during the year?

How many require the Federal concern?

Mr. TOPOLNICKI. Well, I have been handling criminal kidnaping cases in our office for over 4 years. We have only asked the Federal involvement on three occasions.

As I indicated in my testimony before, we actually get involved in about 25 in a year.

Mr. HUGHES. Mr. Cheshire?

Mr. CHESHIRE. Mr. Chairman, I polled a delegation of the State of Florida about a week ago of 8 circuits—the State is divided into 20. I noted the metropolitan area of St. Petersburg had four last year; and no recent ones this year; the Daytona Beach area had three; the Orlando area had three; Tampa had four. I cannot explain why a small area on the gulf coast called Sarasota, had 15 to 20 cases pending, and only 3 or 4 arrests had been made; and 6 have been disposed of by no arrests being made; which would tell me they probably turned themselves in and the Villa Beach area, which is the millionaire area, had three.

Mr. HUGHES. How many requests do you make to the Federal department for assistance?

Mr. CHESHIRE. It depends on each and every case. The U.S. attorney is going to want to see a file. And every file has to be very well documented—records of phone calls. I have the teletypes I have sent out to various States, as I mentioned a while ago to Texas. I have all my correspondence. I have TWX's between other agencies in Florida running down tags.

You do your work, you do your homework because your paper is going to get graded at some time by the U.S. attorney. It's like your bank statement. So that's one of the safeguards. Let's take the circuit which had so many of them—if he thinks that circuit, which is probably close to 250,000, 300,690 people, is generating too many, then he should go and pay that local prosecutor a visit. And say: now, pull your file and tell me what you have done. Or are you just haphazardly throwing them into the Federal system? In which event then the U.S. attorney would have a right probably to send a very strong and stringent letter to him.

Mr. HUGHES. Have you had any situations where the person taking the child was in imminent risk of leaving the country?

Mr. CHESHIRE. Leaving the country?

Mr. HUGHES. Such as this situation?

Mr. CHESHIRE. Well, yes; it's kind of strange hearing Mrs. Uhlman's story. I happen to have in my circuit a lot of electronic firms, Harris Corp. out of Rochester, Dictaphone, Pitney-Bowes, Documation, Collins Electronics, that make a great deal of space-age technology.

It is not unusual to see foreign aircraft parked at our airport. We do an enormous amount of electronic trade in my county with Saudi Arabia. My next door neighbor spends as much time there as he does at home.

We have a contract with that particular Government, we are still friendly with them, and I have trouble at times selecting grand juries in my county because I have to ask: "Can you serve, because if you work for the Harris Corp., you may be in Saudi Arabia?" "Isn't that true?" "Yes, sir, that is true." "Thanks, but we can't use you."

We have had a couple of those cases, but we were successful; they were Americans. And we know that they are going to come home. And we know it's a matter of time of waiting them out, and we don't bother the Federal authorities. They have real estate. We know they're going to come back. They are paying their property taxes; they are not going to abandon their citizenship. Mrs. Uhlman had a unique situation, because her husband is not a U.S.

citizen. I don't know how to handle that. But I do know how to handle those that we have.

And that is basically get in touch with all the kinfolks, loved ones, and tell them: The first time that person phones you, you better let us know; because we are going to be subpenaing you.

Mr. HUGHES. I would like to know if in the scenario involved, as described by Mrs. Uhlman—you have a reaction from the typical U.S. attorney's office, for criteria for how to avoid a flight to avoid prosecution?

Mr. CHESHIRE. I have a relationship where I can go behind closed doors and plead that case, I think, with sufficient proclivity to have a UFAP issued in those circumstances. And it may be a personal thing. I can say I'd probably have a hard time practicing law in that particular area of Colorado under the circumstances I've heard about here today.

Mr. HUGHES. How about you, Mr. Foley, if you had such a situation—risk of flight?

Mr. FOLEY. I think what the chairman and the committee are trying to get at is the feasibility of preventing flight. I have handled two cases of international flight. I think in many cases prevention is entirely possible. One I didn't know until later after the person had left the country, that they were in fact intent on international flight. And the other case, it was before the enactment of this law. I was able to determine that the person was intent upon leaving the country, and was able to issue a felony warrant for his arrest.

I was able to determine the method by which he intended to leave the country. And I missed him by about 5 minutes.

Mr. HUGHES. Let me ask: If the Department of Justice made a policy not to issue a UFAP warrant in a case in which the location of the parent is known, what effect would that have?

Mr. CHESHIRE. Not to issue where the location is known?

Mr. HUGHES. Yes?

Mr. CHESHIRE. That would be no problem. I think we have the resources in the State. We do it every day, pick up criminals at another location.

Mr. TOPOLNICKI. I would believe it is no problem as long as you have local officials helping you. But that's a problem. You might know the location of the parent, but if local officials refuse to act, then you still need the involvement of the FBI.

Mr. FOLEY. I disagree with that, Mr. Chairman. I don't think that is proper use of Federal statutes. I don't think it's proper use of Department of Justice or the FBI.

I have two cases pending in which State authorities have refused to extradite. We are doing everything we can, including possibly seeking a mandamus action.

But I don't think that the Department should issue a UFAP in cases where the whereabouts are known.

Mr. HUGHES. Have any of you had an occasion where a State has refused to execute a warrant or to perform extradition?

Mr. CHESHIRE. Yes, sir; the State of Colorado. I personally intervened with the Lieutenant Governor out there in the *Strickland* case—about which the book here was published. She was apprehended by the Bureau in Colorado Springs. This was prior to the

Federal act. I forgot the name of the hospital. She was not going to be extradited by the Governor. It was made abundantly clear that she would be able to remain there. We had the child. The Bureau did call the parents and arrange for the child to be removed from the State.

We have leverage, and every person would have the same leverage, I think, in that if she ever wants to see the child, she has to come back to the State of Florida to go through the civil proceedings to establish visitation rights in an orderly manner. And she can get a defense counsel and reason with him, and come back to the State and stand trial; but if she doesn't, the woman will never see the child again. There's always a chance you can beat me in the courtroom.

Mr. HUGHES. How long ago has that been?

Mr. CHESHIRE. Well, the jury entered its verdict on the 12th day of June 1978.

And that has had an open file for about 2½ years.

Mr. HUGHES. The gentleman from Michigan?

Mr. CONYERS. Well, I thank Mrs. Uhlman and the attorneys for their very excellent testimony.

Mr. HUGHES. Let me ask just one additional question: You indicated that you would not represent to the Department the fact that you were going to prosecute unless you intended to do so?

Mr. CHESHIRE. That was me; we have made that commitment.

Mr. HUGHES. Does that also represent your own philosophy and that of your office?

Mr. TOPOLNICKI. That's an absolute requirement. My boss would not tolerate anything else. We have always been honest and candid in our requests, even to the point of, in this particular case here, of indicating to the U.S. attorney's office locally, and when we made contact here in Washington, that if we could get their involvement, that quite frankly it might help a great deal in negotiating the return of the children. We told them that. We are honest about that.

We are also honest about the fact that if we could return that father, and we have the children under a controlled situation where they could be returned to their mother, we would prosecute him, too.

The problem is, that once they are located and apprehended, even when you have Federal assistance, and they are fighting extradition, or extradition is pending, if you don't have the children located, and they are still hidden, the charges are the negotiation point if the parent is ever going to see those kids again. That is when we get blackmailed into dropping the charges.

The intention is there when you file; but like in all negotiations, you know, things go amiss; and you have to adjust later.

Mr. HUGHES. I want to ask—I don't know when we have had three prosecutors before the committee at one time, and let me just ask the gentlemen: What kind of cooperation do you receive from the Justice Department generally?

Mr. CHESHIRE. I would say excellent, if you are dealing with something like public corruption, or sewer plants that are never built, and, of course, the classical bank robberies.

But we do not have a mutual love society when it comes to child snatching.

Mr. HUGHES. How about in other crime?

Mr. CHESHIRE. I can't think of any situations.

Mr. HUGHES. What kind of relationship do you have with the Bureau of Alcohol, Tobacco and Firearms?

Mr. CHESHIRE. Slim to none. Most of our machine guns in our State are self-produced or imported down through Miami; and that is where most of them are. In our circuit we don't have too many of the cocaine cowboys running around.

Mr. HUGHES. How about DEA?

Mr. CHESHIRE. We have our ups and downs, kind of like an elevator.

Mr. HUGHES. How about you, Mr. Topolnicki? What kind of a relationship do you have?

Mr. TOPOLNICKI. Well, this is interesting. I am in charge of the entry part of our office for felonies, where we review all cases presented for State prosecution. It is interesting that we get requests from Federal agencies to prosecute on State charges, because the U.S. attorney's office won't accept the cases. I'll put it that way. And particularly with DEA we find that happening.

Mr. HUGHES. What about the FBI?

Mr. TOPOLNICKI. We always had a good response at the FBI. We don't have involvement too often, but when we do ask, it is a very important matter. And there's always been a good response.

The only problem we have is in this area of parental kidnaping.

Mr. HUGHES. How about you, Mr. Foley?

Mr. FOLEY. Mr. Chairman, if I could confine my comments to parental kidnaping: I have had very little contact with Justice Department in other instances; perhaps that is because I specialize in the area of parental kidnaping.

In that area I have received excellent cooperation from our local U.S. attorney's office, including, at one point, our U.S. Attorney defying the Director and the DOJ Criminal Division, in Washington, and issuing a UFAP, contrary to their directive. It may have had something to do with the fact that it was his last day on the job; but it was extremely helpful to us in getting the child returned.

In terms of other areas with the Federal Government, frankly I have had very, very good cooperation. The Bureau of Alcohol, Tobacco and Firearms has been wonderful to me in trying to locate Mr. Bartell over a period of 9 months.

Mr. HUGHES. That is encouraging. I know we have had a mixture, all the way from no cooperation from the FBI and other agencies, to excellent. So cooperation isn't a one-way street with nothing returned; this is encouraging that we are developing a cooperative effort. That is what it is all about, working for the same thing.

Mr. CONYERS. Could I enlarge?

Mr. HUGHES. Yes.

Mr. CONYERS. Just briefly—I would ask your opinion about these relationships, because we keep going over the necessity for cooperation between Federal and State law enforcement people; drug cases, gambling cases, white collar crime, civil rights law enforcement.

Is the general opinion of all the counsel the same on those questions as that which you have given to the question posed by the chairman—no changes?

[Indications of assent by the panel members.]

Mr. CONYERS. We don't get reports. We get testimony that the drug business is largest in your State economy?

Mr. CHESHIRE. And the national debt.

Mr. CONYERS. I don't know if it is quite that big. But as large as that figure is—but, is it because of the great influx of drug cases that you make the statement, or because of you have a great involvement that you get good cooperation?

Mr. CHESHIRE. No; I cannot say. I think it is we are not catching them. The pressure is being put on the southern part of the State. We have three men in our law enforcement department working in that area. Miami, with the same population, would have 40 to 50. The DEA has got the heaviest concentration there.

We have a lot of overflow. A lot of abandoned airplanes parked in pastures, making nonscheduled stops. I have had as many as seven airplanes confiscated. Docking storage is $250 a month and we are catching them; but we are catching basically the "mules"; people who don't speak good English. We prosecute them and they go back to Colombia; and they are back again.

Mr. HUGHES. We have a very definite plan about preventing crime in this country: cut the budget, DEA and all——

Mr. CHESHIRE. What about Coast Guard?

Mr. HUGHES. Oh, yes.

Mr. CHESHIRE. We are going to catch them, too.

Mr. HUGHES. The OMB plan is to take everything out of the budget. That is the plan—it is a good one if you think you can take muscle and bone out of the budget; and this is the plan the administration is developing to combat crime.

Thank you.

Mr. CONYERS. Did counsel from Florida tell me where his circuit is?

Mr. CHESHIRE. I'm about halfway between Jacksonville and Miami, 72 miles on the Atlantic Ocean, two deepwater ports, called Brevard County; it is also the Kennedy Space area; and I have Seminole County directly to the west, which is the north end of Orange County, and basically the bedroom, they say——

Mr. CONYERS. Sparse population?

Mr. CHESHIRE. Sparse, you ask? Next year we become a metrocircuit, which is a designation used in the United States for a population of a half million or more. We are presently at the 460,000 and projected by the University of Florida to be at 1984 at the half million mark.

Mr. CONYERS. Thank you very much.

Mr. CHESHIRE. Mr. Conyers, where are you from?

Mr. CONYERS. I serve the United States of America, all of them.

Mr. CHESHIRE. OK.

Mr. CONYERS. Everytime I get to vote. I come from Detroit.

Mr. CHESHIRE. Oh, I thought maybe you were a Congressman from the Florida area, and I just didn't recognize you.

Mr. CONYERS. No, I come down there, though.

Mr. CHESHIRE. I see. Well, it's nice to have you.

Mr. CONYERS. Thank you.

Thank you, Mr. Chairman.

Mr. HUGHES. Thank you.

I want to thank the panel. You've been very helpful and responsive in developing the record; and we thank you.

[The full statements follow:]

BIOGRAPHICAL DATA OF DOUGLAS CHESHIRE, JR.

Elected State Attorney of 18th Judicial Circuit (Brevard and Seminole Counties), State of Florida, from 1976 to date.

Private defense counsel specializing in criminal defense work and domestic relations from 1973 to 1976.

Assistant Public Defender, 1973.

Assistant County Solicitor and Assistant State Attorney, 1969 to 1973.

Vice President of Florida Prosecuting Attorneys Association, former Secretary of Florida Prosecuting Attorneys Association, State of Florida Director of National District Attorneys Association.

Lecturer to National District Attorneys Association and National Council of Juvenile and Family Court Judges on Juvenile Community Arbitration Programs.

Session leader of National College of District Attorneys.

SUMMARY

State prosecutors are confronted with an ever increasing demand for the investigation and prosecution of childsnatching cases which in a federal system is the Parental Kidnapping Statute. The errant spouse readily discerns their plight if they stay in the local community. The emotional tension associated with child-snatching or parental kidnapping requires the spouse to relocate, become re-employed, maintain a low profile and seek amenity. State prosecutors and law enforcement officers lack the jurisdiction, statutory authority, financial assistance and manpower to adequately pursue the offending spouse.

This problem is clearly recognized by Congress. The state prosecutor and the aggrieved spouse is questionable at best that the Department of Justice realizes that it has been mandated. The close scrutinization of childsnatching or parental kidnapping problem clearly indicates that the federal government is in the unique position of being able to handle this problem. This is one of the few instances the state agencies cannot say they can do a better job of protecting the people any more so than a local doctor can constitute the front-line in deterring an epidemic.

CHILDSNATCHING

Profile of a childsnatcher—The defendant, or the Black Hat individual, falls within an age group of early 20's to early 30's. The person is in the late stage of separation or early stages of divorce life, with the notable exception of one spouse failing to return the child after having exercised a visitation period. The Black Hat is financially independent and is capable of working and generally has a trade or profession in which accessibility to the labor market provides for immediate employment. The Black Hat will not possess a criminal record or belong to any subversive organization or possess any violent criminal characteristics which make them a threat to society. On the contrary, the Black Hat has a long list of community, social, religious qualifications. A psychological profile would tend to indicate the love the Black Hat has for the child equals or surpasses the hatred that spouse has for the White Hat.

The complainant, sometimes better known as the White Hat, generally is found in a distraught emotional condition and generally suffering from a financial detriment when compared to the Black Hat. The parents or grandparents tend to intercede with both financial and emotional support. Oftentimes the success rate is affected by the intervention of the parents or grandparents who in some instances become more involved or embroiled in the prosecution and search for the child than the natural parent. Prosecutors may be put in a position of questioning whether the parent or grandparents are the ones most actively pursuing the case.

Childsnatching cases have three stages. They are: (1) investigation (2) alternatives to prosecution (3) prosecution—trial. The investigation is relatively brief and simple and is oftentimes commenced by the attorney representing the White Hat. Vital statistics, description, habitat, relatives, employment records and old girl/boy friends, as a group oftentimes provide a necessary criminal element for prosecution to estab-

lish the Black Hat is no longer within the state. The cooperation the prosecution receives from the White Hat is excellent and at times is excessive to the extent the investigator spends more time talking with the victim and receiving new information on a daily basis. Not only does the investigator receive daily input, he can expect to receive phone calls and correspondence from the Governor's Office, state legislators and congressmen. It is not unusual for a serious penpal relationship to develop with each organization.

Prosecution is relatively straightforward and requires basically lay witnesses for the purpose of trial. Dependent upon the temperment and judicial philosophy of the presiding judge, the trial by jury may be concluded in one day. In some instances, the trial period may be extended if both the prosecution and defense are permitted to tell the whole story which oftentime invites mudslinging and washing the proverbial dirty linen in a public forum. I am of the opinion the latter is the exception rather than the rule in dealing with the judiciary. It is not uncommon for the White Hat to forego prosecution once the child has been returned and civil proceedings have been instituted or reconciliation of feelings and the promise by the Black Hat to cease and desist from future activities has been extracted by either a mutual agreement or the possibility of contempt of court action.

In many instances the prosecutor will find alternatives to prosecution. These alternatives may appear to be unorthodox and blessed with a great deal of originality, depending on the circumstances. A few examples are as follows: the prosecutor will subpoena telephone tolls of the Black Hat's parents during the time that coincides with Easter, Mother's Day, Father's Day, birthdays, Thanksgiving, Christmas, New Year's and the child's birthday. Telephone numbers are compared with information previously supplied during the investigation stage. Grandparents are subpoenaed to appear before the prosecutor, placed under oath and examined with the admonition that perjury is generally a felony when it is part of a legal proceeding. The ingenuity and salesmanship of the prosecutor is paramount during this stage and is probably best handled by the elected official as opposed to an assistant. Another alternative means available is the offering of a reward for information leading to the whereabouts of the Black Hat.

"If you steal a train, you don't park it at a depot," equates to the problem, "* * * if you snatch your child, you don't stay around town." On the contrary, you get out of state in a hurry. The relocation process is the nightmare most commonly experienced by state prosecutors. Funding, manpower availability, financial resources, criminal prosecution priorities, dollar signs and case load directly affect the return of the child and prosecution of the Black Hat. State resources and limitations imposed by statutory authority tend to preclude nationwide man/woman hunts.

The advent of books, periodicals, legal magazines, and a segment of the legal community specializing in domestic relations has brought an awareness of the introduction of the Department of Justice into this area of childsnatching. The prosecutor who is candid with the White Hat has an obligation to advise the spouse that little assistance can be expected from the Department of Justice. It is difficult to reason with the spouse as they are in no mood for explanations or excuses. They want and demand the expertise, power, prestige and resources of the Federal Bureau of Investigation. The White Hat is not inclined to take no for an answer. If so, this committee hearing would not be necessary today. To an aggrieved spouse/White Hat the significance and importance of Abscam, political corruption and white collar crimes are not even a close second when a child has been snatched.

A close reading of Exhibit A shows some of the problems that state prosecutors are experiencing with the Department of Justice. It would appear that as long as a state prosecutor is actively involved in the case, the Federal Bureau of Investigation will not intervene. One must ask, if the state terminated its investigation, would the F.B.I. become actively involved? The correspondence does not really tell why the Department of Justice is not actively involved in the investigation such that the state prosecutor may communicate with the aggrieved spouse. It also places the state prosecutor in the position of having to speak on behalf of or attempt to justify the Department of Justice position.

Another question arises from the correspondence as to why not let the Federal Bureau of Investigation handle the out of state investigation and let the state prosecutor handle the trial once the errant spouse and the child have been located. I am unable to think of any argument in defense of this proposition, considering that if the errant spouse were located within the state by state law enforcement officials, the state would be required and expected to prosecute regardless.

Two situations arise when a child is removed from the jurisdiction of the custodial parent. In most instances the means and method of removal of the child are known by the spouse. The only thing that is not known is where and how the child is being

concealed. The emotional and mental impact on the aggrieved spouse places that person in a Lindbergh state of mind. The greatest crime is not knowing anything. The sound of Christmas bells, Easter egg hunts, Fourth of July fireworks, Thanksgiving turkey and the abducted child's birthday creates an emotional uncertainty which compares with the mental anguish of a M.I.A. family of the Viet Nam era. It is this situation that most desperately needs the intervention of the United States Justice Department for reasons previously stated.

The other situation that presents itself on a less emotional basis is when one spouse openly refuses to return the child from a visitation period. In this instance the spouse will institute legal proceedings in a foreign state and oftentimes rely on a home cooking theory of law which frustrates the attempts of the aggrieved spouse by frustrating the return of a child to the home state. Generally, this litigation is initiated and sustained by the errant spouse who has a deep pocket and access to financial resources. Once again, the dollar sign rears its head and frustrates the system. The child is generally held captive and closely scrutinized in all activities for fear that the aggrieved spouse will return the child to the home state. Limited contact by mail and telephones do ease the pain of the aggrieved spouse. The intensity of the emotional pain is less than in a situation which the aggrieved spouse has no idea as to the child's physical condition and whereabouts. The holiday pain syndrome effect on the aggrieved spouse can only be slightly less than the first example. The second example generally does not frustrate or prohibit the home state of the child from instituting prosecution with extradition by basically a straightforward and uncomplicated legal proceeding.

The Parental Kidnaping Prevention Act of 1980 without enforcement of the Justice Department leaves a large segment of aggrieved spouses with minimal hope of locating the concealed child. The Justice Department has got to realize that only their manpower and resources are the ultimate answer. In the past, state prosecutors were forced to rely on state agencies. Since the enactment of the Parental Kidnaping Prevention Act of 1980, it is my opinion state prosecutors must still rely upon state involvement.

The secret to preventing child snatching lies within the concept that the errant spouse must know that he will be vigorously pursued, not only by the state agencies, but by the Justice Department. Priorities need to be established within the Justice Department to elevate the enforcement of the Parental Kidnaping Prevention Act of 1980. If an accurate assessment is made by the Justice Department that the F.B.I. does not have the manpower and resources and cannot perform the function as outlined in the Federal Code, then the people of this country should be so advised and be permitted to lobby their Senators and Congressmen for an equitable remedy.

There is an old Florida expression that states ". . . If your gonna fish, you gotta cut bait" which equates childsnatching problems and holds the proposition that the Department of Justice has the mandate of Congress as it pertains to the Parental Kidnaping Statute that it must likewise form the investigation if prosecution is to ensue.

EXHIBIT A

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Tampa, Fla., June 18, 1981.

Re: Warren K. Gerdon, also known as, Warren Van Valien; Shawn Michael Gerdon—victim; unlawful flight to avoid prosecution—parental kidnaping.

Hon. GARY L. BETZ,
U.S. Attorney, Middle District of Florida,
Orlando, Fla.

Attention of Joseph T. Urbaniak, Jr., Assistant U.S. Attorney.

DEAR MR. BETZ: This letter will confirm a conversation on June 15, 1981, between Special Agent Clifford G. Botyos and Assistant U.S. Attorney, Joseph T. Urbaniak, Jr. when the following information was discussed:

Mr. Urbaniak was advised on June 13, 1980, a warrant was issued for Warren K. Gerdon at Brevard County, Florida, for the charge of Removal of Child From State in violation of court order, which is a third degree felony punishable by a five year prison sentence. Mr. Urbaniak was also advised the subject had been separated from his wife, Elaine Gerdon, and the marriage was dissolved on October 2, 1979, at Brevard County, Florida. In addition, Mr. Urbaniak was advised Elaine was granted custody of their child, Shawn Michael, and Warren K. Gerdon was granted visitation rights. Mr. Urbaniak was advised on November 16, 1979, the subject exercised

his visitation rights and picked up his son and they have not been seen since. Mr. Urbaniak was also advised based on information furnished by W. J. Patterson, Executive Assistant, Office of the State Attorney, Titusville, Florida, this is basically a domestic situation and no evidence has been uncovered which would indicate the child is in any danger of severe bodily harm and there has been no indication of child abuse. Mr. Urbaniak was also advised this matter is still under active investigation by the state attorney's office and any information received concerning the whereabouts of the subject is pursued in an effort to locate and apprehend the subject.

Mr. Urbaniak was also advised as late as December, 1980, the subject was known to be living with his grandparents at San Antonio, Texas, but efforts to locate the subject at San Antonio met with negative results.

Mr. Urbaniak advised based on the facts as presented, this matter did not meet the guidelines under the Parental Kidnaping Statute and he would decline prosecution at this time. Mr. Urbaniak did point out he might reconsider his decision at a later date.

In view of the decision rendered by Mr. Urbaniak, no further investigation is being conducted at the present time.

Sincerely yours,

ROY B. KLAGER, JR.,
Special Agent in Charge.

PERRY W. DORAN,
Supervisory Senior Resident Agent.

PREPARED STATEMENT OF JOHN A. TOPOLNICKI, JR.

Mr. Chairman, Members of the Subcommittee, thank you for inviting me. I am John A. Topolnicki, Jr., and I am a Chief Deputy District Attorney, serving Robert R. Gallagher, Jr., who is the District Attorney for the Eighteenth Judicial District of Colorado. Our judicial district handles three rural counties (Douglas, Elbert, and Lincoln), and one urban county (Arapahoe, a suburb of metropolitan Denver, Colorado). The judicial district has a total population of approximately 375,000 people, and our office becomes actively involved in approximately 25 parental kidnapping cases each year. In three of the parental kidnapping cases handled by our office, we have sought Federal assistance.

One case involved the taking of three girls, by their father, who did not return the girls after a Thanksgiving visitation in 1980. The father was a citizen of Tunisia and called the Mother stating that he was in Tunisia with the children. The Mother contacted our office, and I discovered that the girls were actually in Paris, France. I contacted the American Embassy in Paris. The woman with the American Embassy, who I reached during the middle of the night, asked if there were Federal warrants or charges involved. I indicated that I had been informed that such warrants were not possible due to existing enforcement policies of the Department of Justice, which disqualified this case for proceedings by way of Title 18, Section 1073, of the United States Code, Flight to Avoid Prosecution. I indicated that all I wanted was the telephone number for a local Police Department. After much discussion, avoidance, and argument, she gave me a number for the Central Police Department in Paris.

Through sensitive negotiations with local Paris police officials, Paris prosecutors, and French courts, we were able to secure the return of the children to the State of Colorado. The return necessitated an agreement that our local felony charge against the father would be dropped. Every person I contacted inquired as to whether or not Federal officials or warrants were involved. I had a clear impression that had Federal officials and warrants been involved, a great deal of response time would have been saved that was otherwise spent while various public officials sought authorization or clarification of their authority to act on the basis of Colorado felony charges. In this case, we had five hours to act before the father caught a plane from Paris to Tunisia, and time was a critical factor. We were lucky.

Another case involved a situation in which a Mother had not seen her daughter for two and one-half years. The girl's father had taken her on a shopping trip during visitation and did not return her to her Mother as arranged. This woman was thousands of dollars in debt, due to the use of private detectives and lawyers in attempting to locate child. She believed her daughter was in the State of Texas. She told me that the local United States Attorney's Office and the Federal Bureau of Investigation had refused to help locate her daughter. Her hopes were considerably raised when the news media reported the passage of the Parental Kidnaping Pre-

vention Act of 1980, by the 96th Congress. She had followed the progress of the legislation while it was pending before Congress.

After the Act became effective, she again contacted the United States Attorney's Office, feeling that the new Federal law would provide an avenue for Federal assistance in locating and recovering her daughter. Her frustration continued in that the United States Attorney's Office responded by saying that they were examining the new legislation and establishing office policies regarding the new Act's implementation. She never received Federal assistance. I am happy to report, however, that we did recover her daughter in May, 1981.

The third situation involved a Mother by the name of Kristine Ann Uhlman and her two children, Maisoon Mustafa Ukayli (four year old), and Hani Mustafa Ukayli (two and one-half years old). Kristine and her two children left Saudi Arabia by way of Kuwait and returned to the United States on June 23, 1981.

On August 24, 1981, Kristine Uhlman received a Temporary Custody Order for her children from a Colorado Court. Her intent was to reside within the State of Colorado to acquire residency, and then to litigate divorce and permanent child custody proceedings.

On September 11, 1981, at 6:30 P.M., Kristine's two children were forcibly taken by their Saudi Arabian father while they were playing outside of their Denver home. This act prompted a request for Federal assistance from the Federal Bureau of Investigation and the United States Attorney's Office. The requests for Federal assistance and the response received are outlined in the written testimony of Bennett S. Aisenberg, an Attorney at Law in Denver, Colorado. He represents Kristine Uhlman and has submitted his written testimony for this Subcommittee's consideration. I wish to incorporate his testimony as part of my written report: All requests for Federal assistance were denied.

It has been my experience that child stealing is a controversial emotional, and very subjective crime. Public officials, immigration and airport personnel, state and local police departments, district attorneys offices, and other persons or agencies which may be requested to assist in locating children and apprehending offending parents often shy away from and avoid such involvement. No one likes to make decisions or to exercise discretion when the tremendous emotional upset of parents, and more importantly, innocent children is at stake.

The existence of a Federal warrant for Unlawful Flight to Avoid Prosecution, and the involvement of the Federal Bureau of Investigation, is a convincing factor in causing reluctant public officials to act and to provide assistance to a requesting state. The mere existence of such Federal involvement has the practical effect of removing many of the frustrating concerns which seem to exist in the minds of public officials when there is no Federal involvement. These concerns generally fall within the following categories:

(1) Is there a valid court order granting custody to either parent, and if so, are there conflicting custody orders from different states?

(2) What are the equities involved between the two parents?

(3) Were the children taken by the offending parent to protect them from child abuse or neglect on the part of the custodial parent?

(4) What is the likelihood of a future prosecution if an arrest is made, and will the requesting state attempt to extradite the offending parent?

(5) What is the likelihood of the governor granting extradition from the state wherein the offending parent is apprehended?

(6) How do the provisions of the parental kidnapping statute in the state where the offense occurred compare to the provisions of the parental kidnapping statute in the state where the offending parent is apprehended?

(7) How does the public official involved personally feel about child custody issues and the fact that the offending parent is alleged to have committed a crime?

(8) What ties does the offending parent have to the community where he is located? Does the public official personally know the offending parent? Would action on the part of the public official possibly affect his future election or relationship to the community?

(9) Does the local public official have sufficient resources with which to act?

(10) Are there adequate facilities in which to place the children after the offending parent is apprehended, until such time that the custodial parent can make arrangements for the return of the children and for the expenses involved in such return?

(11) What will be the traumatic effects to the children involved?

(12) What is the possibility for legal action against the public official for acting?

(13) Is there uncertainty concerning the procedural and substantive legalities involved?

(14) What are the policies within the public official's office, in the local district attorney's office, or local police departments regarding the handling of parental kidnapping cases?

(15) What is the extent of public and news media pressure?

(16) Et cetera.

In my experience, public officials, who are requested to provide assistance, have more confidence that such concerns have been resolved when Federal authorities are involved as compared to when only state authorities are involved. As such, local officials and police departments take a more active and aggressive interest in assisting a requesting state in the apprehension of an offending parent, and in the recovery of children, when they know that the Federal Bureau of Investigation is involved and that Federal warrants have been issued.

My frustration with the Department of Justice concerns enforcement policies of Title 18, Section 1073, of the United States Code, Unlawful Flight to Avoid Prosecution, and the Parental Kidnaping Prevention Act of 1980. I agree that enforcement policies are necessary and justified so that the system will not be glutted with cases which can be successfully handled by state authorities and to avoid abuses. However, present policies are too restrictive and need to be rewritten to allow Federal involvement in the following types of parental kidnapping situations:

(1) All cases in which the children involved may be endangered, or where a reasonable probability exists that the children might be abused or neglected by the offending parent. (In such cases the Federal Bureau of Investigation can supplement local law enforcement resources in locating and returning the children before any harm occurs.)

(2) All cases which may involve international flight, or where international flight has already occurred. (In such cases the existence of Federal Bureau of Investigation involvement and Federal warrants provides a sense of importance in the minds of airport, border, and immigration officials, causing them to be more aggressive and intense in apprehending the offending parent and in recovering the children if they leave or reenter the country.)

(3) All cases in which the offending parent has attempted to hide or has hidden the children. (In such cases, investigative resources of the Federal Bureau of Investigation can be legally utilized by a requesting state in locating the offending parent and the children. This is particularly true when local officials are protecting or frustrating attempts by a requesting state, or when there is continued interstate movement of the offending parent and/or the children. The existence of Federal involvement can aid in negotiating the return of children who cannot be located, since most offending parents consider the existence of Federal charges to be a more jeopardizing situation than the existence of state charges.)

(4) All cases where it can be demonstrated that local or state officials lack the resources or expertise to help, are refusing to cooperate with, or are refusing to assist a requesting state or custodial parent with legally locating and apprehending the offending parent, or in legally locating and returning the children involved. (In such cases, the requesting state has no authority to act in the state where the offending parent or the children are located. However, Federal Bureau of Investigation Agents would have legal authority to apprehend the offending parent once Federal warrants were issued. When local officials lack resources or experience, or when local officials refuse to act when they legally can, the custodial parent is faced with the decision of re-kidnapping the children if and when they locate the children on their own. This type of activity can be very harmful and dangerous to the children involved, to the offending parent, and to the general public.)

I also suggest that the local United States Attorney's Office have the authority to make decisions and to grant authorizations regarding Federal involvement. The first few hours after a kidnap occurs are critical, and any delays awaiting decisions from Washington, D.C., can be very costly. The local United States Attorney's Office is in the best position to learn about and understand the individual facts, circumstances, and equities of each case. The local United States Attorney's Office is also acquainted with the local law enforcement officers, district attorneys, and Federal Bureau of Investigation Agents involved.

Before Maisoon and Hani Ukayli were taken on September 11, 1981, our office was able to boast a 100 percent return of children in those cases in which we could legally act. My District Attorney, Robert R. Gallagher, Jr., insists that our office be conscientious and diligent in pursuing parental kidnapping cases. He insists that any requests for Federal involvement be based upon a demonstrated need for Federal assistance and an honest and candid presentation of the facts and equities of the cases involved. We are careful not to abuse the Federal resources, and it is extremely frustrating to receive rejections on those few requests which are made. This frus-

tration is especially acute when the rejections are based on very narrow guidelines from the Department of Justice. These guidelines do not allow for the realistic and practical needs of state law enforcement agencies. I feel that Congress specifically intended that all legitimate needs of local and state law enforcement were to be met when Congress passed the Parental Kidnaping Prevention Act of 1980. I feel that the intent of the Congress has been circumvented by the existing narrow policies presently existing within the Department of Justice. These policies prevent these needs from being met, and therefore the policies should be broadened.

Thank you for your time, I will be happy to answer any questions.

JOHN A. TOPOLNICKI, JR.

A Colorado native, born November 19, 1942, in Denver, Colorado, presently living in Jefferson County, Colorado. Married in 1966 to Karen L. Topolnicki (Teri). Has two sons, David (born February 6, 1972) and Austin (born May 31, 1974). Pre-college education in Denver, Colorado. Attended Colorado State University and the University of Colorado at Denver, obtaining a BA Degree in History with minors in Sociology, Psychology, Philosophy, Chemistry, and Biology.

Received JD Degree from the University of Colorado Law School in 1969, honored at graduation by receiving the Best Case Presentation Award for Senior Moot Court. Admitted to the Colorado Bar and the United States District Court for the District of Colorado in 1970. Admitted to practice before the United States Court of Appeals for the Tenth Circuit in 1973.

Graduated from the National College of District Attorneys, Career Prosecutor's Course, in 1976, located at Bates Law School with the University of Houston. Returned to the National College of District Attorneys as a faculty advisor in 1977. Has been an instructor in Criminal and Narcotics Law at Arapahoe Community College in Littleton, Colorado. One of the originators and faculty for the Colorado District Attorneys Council's Trial Techniques School. Instructed at several police academies and to several professional and lay organizations. Has conducted seminars on Criminal Law, Criminal Procedure, Constitutional Law, Search and Seizure, Arrest, Investigative Techniques, Case Preparation, Police Civil Liabilities, Prosecution and Defense Functions, and Colorado Law Surrounding Child Abuse and Parental Kidnapping.

Chairman of the Board of Directors, Arapahoe County Special Crime Attack Team, and member of the Arapahoe County Multi-Disciplinary Child Protection Team and the Training Committee of the Colorado District Attorneys Council.

Worked as a clerk for the Assistant Attorney General Assigned to the Colorado Fish and Game Department while in law school. Worked at the Colorado Revisor of Statutes Office before becoming a Deputy District Attorney in July 1970, for Robert R. Gallagher, Jr., District Attorney for the Eighteenth Judicial District, officed in Littleton, Colorado, and serving Arapahoe, Douglas, Elbert, and Lincoln Counties, which contain urban and rural areas with a total population of 375,000. Has been assigned, during 11 years in the District Attorney's Office, to the Appellate Division (six (6) months), County Court Division (six (6) months), Felony Trial Court Division (four (4) years, one (1) year as Senior Trail Deputy), and has headed the Investigative Division (three (3) years), within the District Attorney's Office. Is now the Chief Deputy District Attorney in charge of the Felony Intake, Complaint, and Special Prosecution Division.

Member of the Colorado and Arapahoe County Bar Associations, Colorado District Attorneys Association, National District Attorneys Association, and Alumni Association of the National College of District Attorneys. Certified by the State of Colorado as a part-time college instructor. Involved in community activities, and enjoys boating, fishing, water skiing, tennis and coaching soccer.

SUMMARY

Statement of Bennett Aisenberg, Esquire, attorney for Mrs. Kristine Uhlman.

The testimony contained herein represents the attempts made to have the Federal Bureau of Investigation enter this case between the time of the kidnapping on Friday evening, September 11, 1981 and the final decision of the Department of Justice not to enter the case which was communicated to us on Sptember 16, 1981. As will be seen from the testimony, under the present Department of Justice policy, when the kidnaping takes place on a Friday evening, it is virtually impossible to get any sort of assistance until the following Monday morning inasmuch as the U.S. Attorneys in the various Districts must receive the authorization of the Department of Justice. Attempts to communicate with someone in Department of Justice and to try to expedite this matter are virtually impossible.

In addition, the current policy which requires physical harm or danger to the children, is too inflexible. In a normal situation where the parent remains within the United States, if there is no physical danger to the children, then arguably this matter may be handled between the states and the immediate assistance of the FBI may not be necessary. I take no position in this regard. However, when it is clear to all concerned that the children are United States citizens, and the father is a citizen of a foreign nation such as Saudi Arabia whose legal systems differs dramatically from that of the United States and the father intends to take the children back to Saudi Arabia, then the rigid policy of "physical harm" impedes the implementation of the Parental Kidnaping Act. The time that action is needed, is immediately after the children are kidnapped and before the noncustodial parent is able to leave the country. In this case, although we have no verification of this fact, it is believed that the father did not leave the country until September 14, two and one-half days after the kidnapping. Unless the local U.S. Attorneys at the very least have the authority and discretion to decide each situation on a case by case basis and authorize immediate action on behalf of the FBI, then the purpose and intent of the Parental Kidnaping act is seriously, if not completely undermined.

Honorable Representatives, by way of introduction, my name is Bennett Aisenberg. I am an attorney admitted to practice in the states of Massachusetts and Colorado and have been in private practice in Colorado since 1958. I am a member of the Denver, Colorado and American Bar Associations, the Colorado and American Trial Lawyers Association, and have held numerous chairmanships in Bar Association committees and have been an officer in the Colorado Bar Association. I have been an instructor in the field of tort law, which is my specialty, at Denver University Law School. I would estimate that approximately twenty-five percent of my practice is devoted to domestic relations and matters associated therewith.

The following will outline in chronological order my involvement in the matters leading up to the Uhlman kidnaping and my contacts with the Federal Bureau of Investigation and Department of Justice subsequent thereto. All times are approximate.

(1) August 24, 1981.—Ms. Uhlman and I appeared before the Denver District Court and obtained an Order awarding temporary custody of the two children to Ms. Uhlman under the emergency provisions of the Uniform Child Custody Jurisdiction Act.

(2) September 11, 1981, 6:35 p.m.—Received frantic phone call from Ms. Uhlman telling me that her children had been kidnapped. Asked her if she had called the police and she indicated that she had. Told her to call the Federal Bureau of Investigation immediately and give them the details.

6:40 p.m.—Ms. Uhlman called to tell me she had called FBI three times. First two times they hung up on her. Third time no answer.

6:45 p.m.—Attempted to call the FBI, received no response.

7:00 p.m.—Talked to Officer Frank of the Aurora Police who was at Ms. Uhlman's home. She indicated she had contacted the FBI and that the FBI could not act until a warrant had been filed. I requested that they file a warrant as soon as possible.

(3) September 12, 1981, 1:00 a.m.—Warrant is filed by Aurora Police. I am told by the Aurora Police that they then called the FBI (I do not know the time) and the FBI indicated it could not act until they had information that the suspect had left the country (I believe this is in error, and I believe the officer was told "until there is information that the suspect has left the state").

2:00 p.m.—Officer Stahl of the Aurora Police speaks to Mr. Ukayli's attorney, Jeffrey Hill, and is informed by Hill that Ukayli did not know there was a Court Order outstanding, and that Ukayli had left the state. Officer Stahl then called the FBI, but the FBI indicated that it could not act without the authorization of the U.S. Attorneys. Officer Stahl requested I call the U.S. Attorney on duty.

2:05 p.m.—I spoke to U.S. Attorney Carole Dominguen who informed me that she would look into filing on Monday. I indicated to her the urgency of this, that the suspect had left the state, and it was our belief he would attempt to leave the country as soon as he could. She indicated it wouldn't do any good to file at this time, inasmuch as, unless we know where the suspect was, any warrant so issued couldn't be executed. She told me that if we had any information as to his whereabouts to call Mary Ann Wesson, the U.S. Attorney in charge of kidnappings.

(4) September 13, 1981, 10:00 a.m.—I received a phone call from an anonymous caller who indicated he knew that a private investigator whom he named had been employed by Mr. Ukayli to stake out Ms. Uhlman's home and had done so for a period of one week prior to the kidnapping. He indicated that there was a file in the investigator's office containing these materials and that the plan had been for Mr.

Ukayli to go to Corpus Christi, Texas. He indicated he did not know how Mr. Ukayli was to go there, what his plans were once he got there or any other details.

10:05 a.m.—I called the Aurora Police and informed them of this fact. They indicated that they would immediately call the Chief of Police in Corpus Christi, Texas and I should call the U.S. attorney to get FBI involvement.

10:15 a.m.—Called U.S. Attorney, Mary Ann Wesson, at her home in Boulder, Colorado. I indicated to her the situation (she had read the article on the front page of the Denver Post and already was aware of it) and requested she authorize the FBI to become involved. She indicated she was on her way to her office in Denver inasmuch as she had to write a brief, and she gave me the name of the FBI agent to call. She indicated that if the FBI had any questions they could reach her at the U.S. Attorney's office in Denver at about 11:00.

10:25 a.m.—I called the FBI and a woman answered the phone. I asked for the individual Ms. Wesson had named. The woman said that she could not reach him but would have an FBI agent by the name of Don Civitano get back to me.

10:30 a.m.—Agent Civitano called me and I gave him all the information that I had. He said he would follow it up. I advised Ms. Uhlman that we had gotten the assistance of the FBI.

11:25 a.m.—Received a phone call form Agent Civitano indicating that the U.S. Attorney would not authorize his involvement.

11:30 a.m.—I called U.S. Attorney, Mary Ann Wesson, to find out what was going on. She indicated when she arrived at her office she examined the Parental Kidnaping Act of 1980 and found that there were requirements which must be fulfilled before she could authorize FBI intervention. She said that first she must be assured that the Arapahoe County police had issued a warrant. I assured her that they had and could get her any corroboration she needed. She then indicated that she must also have assurance that they would extradite if the suspect was found. I indicated that I would get back to her momentarily.

11:35 a.m.—I called District Attorney Tom Dunn in Arapahoe County, and he assured me that they would extradite if the suspect was found. He stated that if Ms. Wesson had any questions on this to call him directly.

11:40 a.m.—I called Ms. Wesson and told her of my conversation with Dunn. She then indicated to me that in addition they needed an affidavit from a disinterested person that the children were in danger of physical harm. I stated to her first that I had read the statute and found no such requirement in the statute. She assured me that it was in there. I then indicated to her that there is no way that we can in good faith maintain that the children were in physical harm inasmuch as the man was the chidren's father. I asked her if emotional or psychological harm would be sufficient and she said did not know. I told her that I would call her back.

11:50 a.m.—Called Ms. Uhlman and she indicated there was a woman in Fort Collins who had lived in Saudi Arabia, knew her family, and knew the emotional makeup of the children. Stated she could probably give an affidavit to the psychological and emotional harm to the daughter based on the daughter's emotional makeup and the type of environment to which young girls are subject in Saudi Arabia.

12:00 noon—I called Ms. Wesson and told her that I would get her such an affidavit immediately and would she take steps to get these matters underway. It was then she told me that she did not have authority to do this but that the decision must be made in Washington by the Department of Justice which would then authorize the U.S. Attorneys in Colorado to take the necessary steps. I asked her if she would please attempt to do this immediately and she indicated to me that she did not know who to call, that she had to be in Court the next day but would do it upon her return from Court on Monday. I told her that this matter was urgent inasmuch as it was our understanding that he intended to take the children out of the country and back to Saudi Arabia and that every minute was precious. She indicated to me that she could do nothing. I asked her who I could call in Washington to facilitate the matter. She indicated that she did not know. I asked her under this procedure how long it would take to get authorization of the Department of Justice, and she said possibly by Wednesday or Thursday. I facetiously told her at that point that the children will be fifteen years old by the time the FBI decides to act in this matter. I again asked her who I might call either in Denver or in Washington to attempt to expedite this matter. She told me she was just a peon and that I could call the Chief Judge of the United States District Court or anybody I pleased. I asked her if she would attempt to get ahold of Mr. Egnor the head of the FBI in Denver or the head U.S. Attorney, Joe Dolan. She indicated to me she had a brief to write and could do nothing. At that point I was aware I was going to get no further action from Ms. Wesson.

12:30 p.m.—I was not able to find either Jack Egnor's phone number or Joe Dolan's phone number. I called a United States District Court Judge to see if she had any ideas as to who I might call to break the log jam. She indicated she did not know anyone with the Department of Justice in Washington but that I should call either Mr. Egnor or Joe Dolan and told me how to get Joe Dolan's phone number. I asked her if I might state to them that I had spoken to her and she had suggested that I call in order that my phone call be viewed as more than a crank phone call, and she stated I should use her name. I also attempted to contact two other United States District Court Judges in order to discuss the matter with them, but could not reach them.

12:45 p.m.—I called the FBI in order to get ahold of Jack Egnor. I told the woman I had spoken to her before. I told her about the matter again, the urgency of having something done immediately, and further that the United States District Judge who I named had suggested I call. I asked her to get in touch with Mr. Egnor and have him call me immediately.

12:50 p.m.—I called Joe Dolan, Chief U.S. Attorney for Colorado. His wife answered the phone. I used the U.S. District Court Judge's name, told her about the matter and asked her if Mr. Dolan was around. She indicated that he was outside. I asked her please would she ask him to come to the phone. I had about a five minute wait when she came back and told me that he had left and she did not know where he had gone. I asked her would he be home and she said she did not know. I asked her please to have him call me immediately as it was a matter of extreme urgency.

1:00 to 2:00 p.m.—I left my phone open hoping to hear from either Mr. Egnor or Mr. Dolan. They did not call, and although I was home for a good part of the day, I never received a phone call from them either that day or subsequently.

2:15 pm.—I called a retired FBI agent who I have known for a long time and asked him who I could call in Washington or how I could get ahold of Egnor. He said he would attempt to see what he could do. He called back later to say that there was nothing he could do.

2:30 p.m.—I had been in constant touch with the Aurora Police who were quite anxious to get some action out of the FBI and stated to them my extreme frustration. They indicated they would see what they could do at their end.

2:45 to 3:30 p.m.—I attempted to get ahold of Representative Schroeder, Senator Hart, or Senator Armstrong but was not able to locate anyone on their behalf.

3:30 p.m.—Received a phone call from a reporter at a local television station who indicated she had made contact with Senator Gary Hart's press secretary, Tom Gleason, and to keep my phone open as he would call me.

3:40 p.m.—Received a phone call from Gleason to tell me that he was on his way to his office and he would attempt to find the name of the person at the Department of Justice who could facilitate this.

5:00 p.m.—Received a phone call from Tom Gleason who stated the person to talk to was Art Norton, and he would attempt to get ahold of him.

8:00 p.m.—Tom Gleason called to indicate that he had either talked to Norton or had made arrangements to talk to Norton at 6:00 Denver time the next morning and that he would let me know any decision.

8:30 p.m.—Obtained an affidavit from the woman in Fort Collins who had lived in Saudi Arabia to the effect that the daughter would suffer severe emotional and psychological harm if returned to Saudi Arabia.

4. September 14, 1981, 8:00 a.m.—Received phone calls from both Tom Gleason and Mary Ann Wesson that they had been in contact with Mr. Norton and that I should bring the affidavit down to the U.S. Attorney's office. Mr. Gleason was in the meantime obtaining additional affidavits from other individuals who had experienced similar problems in matters of this nature which might assist us.

9:00 a.m.—Tried to reach Art Norton pursuant to Mary Ann Wesson's suggestion, but could not reach him. Left a message for him to return my call.

10:20 a.m.—Received a phone call from Mr. Norton and asked him if he could act immediately. At this time he indicated to me that even when all the proper documentation is submitted, it is still discretionary on the part of the Department of Justice as to whether they will allow the local U.S. Attorneys to get involved in the case. This was the first notification that I had received that even if all of the requirements were met, it was still discretionary on their part. I tried to explain to him that this was not the normal parental kidnapping where the non-custodial parent remains within the United States and thus is subject to the jurisdiction of the United States Courts. I indicated to him that Saudi Arabian law is totally different from Western law and that under the Islamic system, married women have few if any rights. He indicated he would get back to us.

12:00 and subsequent thereto.—Was in constant contact with Tom Gleason, the Arapahoe County D.A.'s Office, etc. to see what could be done. The Arapahoe County D.A.'s Office cooperated completely in getting to the U.S. Attorney written verification of the fact a warrant had been issued and that they would extradite. Made numerous phone calls to Washington to see if anyone could exert any type of influence on the Department of Justice to get them not only to make a decision but, of course, to make a favorable one.

5. September 15, 1981, 11:45 a.m.—Received a phone call from the Denver attorney who Mr. Ukayli had retained. He indicated that he had just heard from his client and that his client was in Saudi Arabia having arrived there on Monday evening, September 14. I notified all parties, including the U.S. Attorney's office and immediately went out to the Arapahoe County District Attorney's Office to meet with the District Attorney and my client. The remainder of that afternoon we attempted to contact Senator William Armstrong's office, and the District Attorney attempted to contact Lowell Jensen in the Department of Justice. It is my understanding that Mr. Jensen called the District Attorney back either Tuesday evening or Wednesday morning and indicated to him that it was the policy of the Department of Justice not to get involved in these type of cases.

6. September 16, 1981, 8:00 a.m. and subsequent thereto.—Both Mr. Gleason, myself and others were attempting to make contacts in Washington some of which were made to get a decision from the Department of Justice.

11:00 a.m.—Ms. Uhlman received a phone call from a local TV station to the effect that their people in Washington had informed them that the Department of Justice had made its decision on Tuesday afternoon, September 15 (this has not been verified) that the decision was not to enter the case. At any rate, this was the first that either Ms. Uhlman, myself, the Arapahoe County District Attorney's Office, or Senator Hart's press secretary, Mr. Gleason, had heard that the Department of Justice had made a decision. If in fact the decision had been made on Tuesday afternoon, all of us had spent a great deal to time and effort subsequent to that time in an attempt to get the Department of Justice to make a decision, when in fact the decision had already been made and none of us had been notified.

SUMMARY

It is my belief that the time during which the assistance of the Federal Bureau of Investigation is essential is immediately after the kidnapping has taken place. Under the present system, especially when the child is taken on a Friday evening, unless local U.S. Attorneys have the authority to make a determination, at least on a case by case basis as to when the assistance of the FBI is necessary, then the time delay and communication difficulties make it impossible to get the type of assistance needed from the Federal Bureau of Investigation at the time it is needed. In this case, although we do not know when Mr. Ukayli left the United States inasmuch as he arrived in Saudi Arabia on Monday evening, three days after the kidnap, it is conceivable that FBI intervention on Friday evening or Saturday morning might have resulted in his apprehension and have prevented him from leaving the country. To have a policy which requires physical harm in this type of situation where the children will be taken out of the United States if the subject is not apprehended, is, in my opinion, shortsighted.

PREPARED STATEMENT OF CHRISTOPHER R. FOLEY

Between January, 1980, and February, 1981, my primary responsibility in the Milwaukee County District Attorney's Office was the investigation and prosecution of parental kidnapping cases. The assignment was part of a conscious effort on the part of the Milwaukee County District Attorney's Office to standardize procedures for handling both investigation and prosecution of parental kidnapping cases. During the course of this assignment, I have had occasion to request and, more often than not, be denied federal investigative assistance under Public Law 96-611.

Refusals to issue unlawful Flight to Avoid Prosecution warrants were, in each instance, the result of the Department of Justice's acknowledged "general policy militating against Federal involvement" in instances of parental kidnapping.[1] Those refusals were subsequent to the enactment of Public Law 96-611, contrary to the expressed intent of Congress contained therein and, in each instance, followed inten-

[1] See U.S. Attorney's Manual, sec. 9-69-421.

sive investigative efforts on the part of State law enforcement authorities which failed to establish the location of a wanted felon.

I acknowledge the validity of certain policy concerns that the Department maintains justifies their position that the Bureau should not be routinely involved in parental kidnapping cases. The proper exercise of prosecutorial discretion and the need for careful utilization of Department manpower may justify, in limited circumstances, denying a U.F.A.P. The knee-jerk characterization of parental kidnapping as "essentially domestic relations controversies" [2] does not justify routine refusal to assist State law enforcement authorities in instances of parental kidnapping and displays an arrogance beyond my comprehension. That characterization substitutes the judgment of the Department for that of Congress, the judgment of the State legislatures in thirty-nine states in which such conduct is governed by felony statutes and, the judgment of the State prosecutor who has determined that State resources should be committed to the extradition and prosecution of an abducting parent.

States must recognize their primary responsibility to prevent parental kidnapping through the effective enforcement of criminal statutes governing such conduct. Congress rejected any transfer of such responsibility by deleting federal criminalization provisions contained in S. 105. Congress has further recognized in Public Law 96-611 however, that once the State has fulfilled that responsibility to the fullest extent possible, the Bureau, under the Fugitive Felon Act, must utilize their resources to assist the State. As evidenced by the experiences related below, the standards totally frustrate the purposes of that act.

In my opinion, Congress should mandate changes in the Department's standards in two areas.

The requirement that State authorities present independent credible evidence establishing physical danger or serious neglect or abuse is not practicable. Domestic violence is widely acknowledged to be largely unreported to "independent, credible" sources. When reported, the "independent, credible" evidence is often protected by State statutes protecting victims and perpetrators. Gathering such evidence may consume crucial hours when prompt issuance would substantially increase the likelihood of early arrest and recovery of victimized children. Finally, such evidence does not exist in cases in which issuance is obviously warranted.

Additionally, the requirement of prior authorization of the Criminal Division of the Department of Justice is entirely inconsistent with Congressional intent. The requirement takes the decision from the local U.S. Attorney, who is best suited to determine the propriety of issuance. The delays occasioned by necessary communication can be extremely detrimental when immediate entry may be imperative. Finally, the decision maker becomes totally inaccessible to the local prosecutor and victimized parent, the individuals best suited to present factors favoring issuance.

Congress may be prepared to accept limiting standards governing issuance of fugitive felon warrants in instances of parental kidnapping.[3] Any limitations should be directed toward assuring that the resources of the Bureau are called upon where most necessary. Local United States Attorneys, unburdened by a general policy mitigating against involvement in parental kidnapping cases are best suited to make that determination. Prior authorization from the Department of Justice in Washington, D.C., can only be viewed as counter-productive and intended to frustrate Congressional mandate.

Any limiting standards must recognize that in serious instances of parental kidnapping, immediate action is imperative to quash a long-term concealment scheme. Local United States Attorneys must acknowledge and weigh that factor in determining whether to issue a fugitive felon warrant.

Other factors which may be acceptable and assure optimal use of Bureau resources as well as encouraging State authorities to fulfill their responsibilities include:

(1) Likelihood of physical or emotional harm to the child;
(2) Evidence of impending international flight;
(3) Investigative efforts initiated by the State law enforcement authorities;
(4) Investigative resources available to State law enforcement authorities;
(5) Length of absence;
(6) Activities of victimized parents;
(7) Past failures of local prosecutor to extradite or prosecute.

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[2] Report on Implementation of Parental Kidnapping Prevention Act of 1980, p. 2.

[3] Mandated routine entry may have an effect not anticipated by local prosecutors and victimized parents. The volume of warrants issued may result in parental kidnapping cases uniformly receiving little Bureau attention.

Because I believe the most valuable service I can render the committee is to present instances in which the Department and Bureau have failed to comply with Public Law 96-611, I recount the following recent case histories.[4]

BARTELL

Armand Neal Bartell abducted his three minor children, Mark, Adam, and Elizabeth, on August 26, 1978. As a result, three felony warrants were issued out of Racine County, Wisconsin, for the arrest of Mr. Bartell. In April, 1980, Susan Bartell, the children's mother, requested the assistance of our office in locating the children and their father. With the approval of the Racine District Attorney, we initiated an extensive investigation.

Repeated checking of car registration information located the vehicle utilized to transport the children out of the state in Alabama. Contact with the owner of that vehicle directed us to the Saint Augustine, Florida, area. All schools in the St. Augustine school system were contacted by mail and follow-up phone contact established that the children were registered in the school system under the name Tucker. Utilizing information obtained through school records, the St. John's County Sheriff's Department was duly notified of the following facts:

(1) the existence of three outstanding felony warrants for the arrest of Armand Bartell, which had been duly entered in the National Crime Information Computer;

(2) The alias Bartell was utilizing, Wade Tucker;

(3) The address of his residence, his employer and, his work site;

(4) The names, grades and locations of schools of each of the children.

For reasons that remain unexplained to me to date, Mr. Bartell was allowed to escape. Most incredibily, he was able to return to the area and spirit the children away, allegedly while the schools and residence were under surveillance.

Fearing that Mr. Bartell would now attempt to flee the country, I immediately applied to the United States Attorney for the Eastern District of Wisconsin, Joan Kessler, for the issuance of a U.F.A.P. under P.L. 96-611.

I received the enthusiastic support of Ms. Kessler and the local F.B.I. Agent assigned to the case. However, direct communication from the Department of Justice precluded their immediate entry into the case. My own direct contacts with the Department indicated that a meeting to develop guidelines for entry into child-snatching cases was scheduled for Tuesday, five days later.

Since a lapse of five days would have permitted Mr. Bartell to leave Florida and once again effectuate a scheme of concealment, we immediately made contact with each and every individual of political influence we could imagine. Among those who were contacted and/or actively pursued the Department of Justice were: Congressmen Les Aspin and James Sensenbrenner, the office of Senator Malcolm Wallop, Director Webster of the F.B.I., who accepted a personal phone call from a friend to the mother of these children, and the White House Council on Inter-Agency Cooperation.

These efforts culminated in the issuance of a U.F.A.P. on Friday, January 9, 1981. This factor, in turn, became our primary bargaining tool when Mr. Bartell, through his employer, contacted our office in an effort to negotiate a settlement of the affair.

F.B.I. intervention continued as our primary bargaining tool throughout our negotiations, culminating in Mr. Bartell's decision to surrender the children and himself on January 14, 1981, in Milwaukee. Subsequently, he pleaded guilty to three state felony charges and is on probation.

I suspect that the nightmare of these children and their mother would not now be over if Mr. Bartell had been aware that on January 13, 1981, the Department of Justice directed the U.S. Attorney's Office here to dismiss the U.F.A.P. pending against him. No reasons were given to my knowledge.

Through direct personal contact and through contacts from various political sources, the hierarchy of the Department and Bureau was aware that our office, as well as the mother of these children had expended every conceivable effort to locate this man. They were aware that we had located him and promptly forwarded all necessary documentation to effectuate his arrest. They were aware that Florida State authorities had been unable to execute our felony warrants despite the fact

[4] It is important for the committee to understand that requests for fugitive felon warrants in instances of parental kidnapping are not part of standard procedures utilized by our office. We believe such a standard procedure would violate our obligation to utilize our resources in an attempt to enforce our parental kidnapping statutes. Between January 1980 and February 1981, we located and arrested over 90 percent of individuals charged with parental kidnapping by resort to National Crime Information Center warrant entry and our own investigative techniques.

we had literally pinpointed his location for them. They were aware of my concern, based upon indirect contact from the defendant, that he would flee to Mexico or South America, or, alternatively, flee the area and effectuate a new concealment scheme elsewhere.

We did not lie to them. We did not fabricate allegations of potential harm. We relied entirely upon the intent of Public Law 96-611, and upon their knowledge that absent their intervention, a mother who had not seen her child in two years was not likely to ever see them again. They were fully aware that this was not an instance of state authorities shrugging their responsibilities and appealing immediately to the Bureau. They were aware that this case had received national media attention and that local agents of the Bureau were ready, willing and able to intervene.

The actions of the Department and Bureau in this instance were directly violative of the spirit and language of Public Law 96-611. The ultimate withdrawal of the federal warrant, which, in effect, constituted a refusal to issue, followed an extensive state investigation. The hierachy fully comprehended that the request was of an emergency nature and was clearly for assistance in a legitimate criminal investigation. Only good fortune and misrepresentation on my part as to the continuing existence of a Fugitive Felon Warrant brought Mr. Bartell to justice and Mark, Adam, and Elizabeth home to their legal custodian.

LOPEZ-MEDINA

On November 9, 1980, Emiliano Lopez-Medina abducted his two minor children, Anna and Linda. On November 21, 1980, he was charged with Interference With Custody of a Child by the Milwaukee County District Attorney's Office. A felony warrant for his arrest was issued and duly entered in the National Crime Information Center Computer.

Investigation by our office eventuated in contact with the mother of a sixteen year old female acquaintance of Lopez-Medina. That contact conclusively established that the children had been transported to Mexico and were residing there with their father and his female acquaintance.

Subsequent to the enactment of Public Law 96-611 and, initially, based exclusively upon conclusive evidence of international flight, application was made for issuance of a Fugitive Felon Warrant.[6] That request was denied.

In April, 1981, the female companion of Lopez-Medina returned to Wisconsin. She supplied "independent, credible" evidence establishing the children had been subjected to serious physical abuse and that their father had neglected to seek attention for serious medical complications one of the children experienced. (A copy of the affidavit this individual executed is attached as Exhibit 1, her name having been deleted.) Corroborative evidence establishing a pattern of physically abusive conduct was obtained from a shelter in California (see Exhibit 2).

The evidence clearly met the requirements of Public Law 96-611 and the limiting standards promulgated by the Department in defiance of Public Laws 96-611. A fugitive felon warrant was again requested, the request being accompanied by copies of exhibits one and two.[7] The request was primarily motivated by a concern for the welfare of the children but, in addition, by recognition that Lopez-Medina was beyond the reach of State process in Mexico and that Public Law 96-611 specifically applied to instances of international flight of parental kidnappers.

The request was denied. The Department alternatively asserted that parental kidnapping was not an extraditable offense, an assertion contradictory to the clear language of the existing treaty,[8] or that extradition would not be sought were a fugitive felon warrant issued. Such a determination is clearly beyond the authorization of the Criminal Division of the Department of Justice.

The investigation of the Milwaukee District Attorney's Office continued. Lopez-Medina re-entered the United States. Through the investigative efforts of the Milwaukee County District Attorney, Milwaukee Sheriff's Department, Racine, Wisconsin Police Department and various law enforcement agencies in Illinois, Lopez-

[6] The existing treaty governing extradition between the United States and Mexico specifically includes "childsnatching" as an extraditable offense.

[7] Pursuant to our request, Congressman Aspin's office also sought the assistance of the Department of State in determining the physical condition of the children. Embassy or Consulate personnel did determine that the children were not in an immediate life-threatening condition.

[8] I acknowledge a substantial question exists as to whether a fugitive felon complaint under 18 U.S.C. 1073 on the basis of a felony parental kidnapping complaint satisfies the "dual criminality" standard inherent in international extradition. The Criminal Division of the Department of Justice, as I understand it, is not authorized to make a conclusive determination.

Medina was apprehended in Illinois. He waived extradition and faces trial in Wisconsin in October, 1981.

Only good fortune brought the children and their father back into the United States. In Mexico, they remained beyond the reach of state criminal process. Financial considerations placed them beyond the reach of civil process.[9] The Department's refusal to issue a fugitive felon warrant, in defiance of P.L. 96-611 and unauthorized limiting standards, removed the most realistic remedy available.

SCHIRRIPA

On December 3, 1980, Dennis Schirripa abducted his daughter, Monica, in violation of an existing custody order. On December 4, 1980, he was charged with Interference With Custody of a Child and a felony warrant for his arrest was duly entered into the National Crime Information Center Computer.

An extensive investigation of Schirripa's whereabouts was initiated. The investigation included stakeouts of various locations, including a bar owned by Schirripa's sister. A court order was obtained which permitted local authorities to trace phone calls being made to the residence of the mother of the child. This order was obtained after Schirripa made harassing phone calls indicating he had fled the State.

Continuous investigative contacts with members of Schirripa's family eventually lead to the surreptitious return of Monica to her mother. Schirripa did not surface at that time and the State felony warrant remained open.

Subsequent to the return of Monica, I was advised that the Federal Bureau of Investigation had entered the investigation of Schirripa's whereabouts. The local office of the United States Attorney has acknowledged that a "file was opened" on the matter in January, 1981 though they did not specifically acknowledge a Fugitive Felon Warrant was issued. Their interest and investigation of the matter surprised me, in view of Monica's previous return and the fact that neither myself nor the investigating officer had actively sought their assistance in the form of a fugitive felon warrant.

I subsequently discovered that the Bureau had an independent interest in Schirripa. He was suspected of involvement in a scheme to defraud a federally insured bank.

Schirripa was arrested by agents of the Bureau. He was convicted of Interference With Custody of a Child in March, 1981. Recently, he was convicted of bank fraud in the Federal District Court for the Eastern District of Wisconsin.

I acknowledge a degree of uncertainty as to the actual background circumstances of federal involvement in the Schirripa case. If a fugitive felon warrant was issued, and if the Department has included that warrant as one of six issued as a result of the "policy change" "implementing" Public Law 96-611,[10] believe the facts have been grossly misrepresented.

The only reasonable inference from the facts known to me was that the Bureau used our state felony warrant for purposes of apprehending Schirripa when their sole motivation was the investigation of a suspected federal crime. It was not a legitimate effort to aid State authorities in their investigation of a parental kidnapping, as envisioned by Public Law 96-611.

I would hope the Committee would question Department and Bureau representatives whether Schirripa is included in the six fugitive felon warrants referred to in Mr. Schmults' letter and in the Department's Report on Implementation of Parental Kidnaping Prevention Act of 1980. Inquiry should also address whether or not the Bureau's primary motivation in entering this case was further investigation of Schirripa's suspected involvement in a bank fraud in violation of federal law. If so, their entry was an "abuse of legal process" in the nature of that assailed by Mr. Schmults in his letter to Senator Cranston.

I wish to thank the Committee for their kind consideration of this statement and related testimony. I hope that the Committee will make every effort to mandate and enforce Department and Bureau compliance with the clear language and spirit of Public Law 96-611.

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[9] Lopez-Medina had previously displayed a total lack of respect for decisions rendered in civil proceedings. Were civil remedies economically feasible, there is no basis to believe he would have complied with a subsequent custody determination.

[10] See Letter to Honorable Alan Cranston, dated June 26, 1981, from Edward Schmults, Deputy Attorney General.

EXHIBIT 1

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs. AFFIDAVIT

EMILIANO LOPEZ,

Defendant.

STATE OF WISCONSIN)
ss
MILWAUKEE COUNTY)

[redacted], being first duly sworn on oath, deposes and states the following as her true affidavit in support of the issuance of criminal charges, to wit: Interference with Custody of Child against Emiliano Lopez, a/k/a Emiliano Medina, by the Milwaukee County District Attorney:

1. Affiant is a resident of Racine, Wisconsin with a date of birth of March 12, 1961 and she presently resides at [redacted], Racine, Wisconsin.

2. That affiant states that the following is based upon her personal observations.

3. That she was a girlfriend of Emiliano Lopez whose present address is believed to be Volcan #3138, Guatimala, Mexico 1800, Antiqua Carret Mexico.

4. That on November 5, 1980 she went to Mexico City with defendant by car with his two children, Anna, date of birth, April 6, 1978 and Linda, date of birth, February 8, 1979.

5. That the above named parties arrived in Mexico on or about November 11, 1980 and resided with defendant's sister at the address listed in paragraph three.

6. That she resided there along with his family for approximately two months.

7. That on December 30, 1980 she left that location and went and resided with relatives in Mexico City, Mexico for approximately two or three weeks.

8. That in mid January her relatives in Mexico City sent her back to Racine, Wisconsin to reside with her parents and family.

9. That she stayed in Racine for approximately one week before talking to defendant over the telephone at which time he convinced her to return to Mexico with him.

10. That on January 22, 1981 she left Racine for California where she met the defendant and stayed with him and friends for two days before going back to Mexico at the address listed in paragraph three.

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11. That when she returned there the two children mentioned in paragraph 4 were also still present.

12. That she stayed at the address listed in paragraph three for approximately one month at which time she observed the following:

That the defendant would beat on his daughter, Anne, by knocking her down, by punching her all over her body until she had very noticeable bruises all over her body, hit her with the buckle of a belt until it caused her to be bruised and sore. She also observed the defendant punch her all over body, grab her by the arm and hold her tightly until bruises appeared on her arms and pull her hair out by the handful.

12. That she observed the defendant do these acts whenever he became angry which was rather frequent.

13. That she was in fear for her life as well as the life of his children in light of the violent acts the defendant inflicted upon them.

14. That the defendant and affiant along with the defendant's children went to his mother's residence at Zicatecoalt 5½, Tlacolula, Oaxcoa where they stayed for approximately three weeks.

15. That affiant and the children resided there during the week while the defendant worked at the post office in Mexico City; that defendant visited with them every weekend.

16. That on the weekends the defendant would be very violent with affiant and the children and continued to inflict very serious injuries upon them; further, that Anne need medical attention and that her tonsils were very large and had swollen to the point where it was very difficult for her to swallow.

17. That defendant failed to get the tonsils removed even after being advised by doctors that their removal was necessary.

18. That while defendant was working during the day, affiant took the opportunity to contact her mother through mail and informed her that she wanted to come home because she was afraid of the defendant and he was constantly beating up on her as well as his children.

19. That defendant, affiant and the children left Tlacolula, Oaxcoa after three weeks and went back to his sisters place of residence in Mexico City.

20. That affiant learned that her mother had sent her an airline ticket which was in the office of the American Embassy in Mexico City. However, she was unable to get permission for defendant to pick up the ticket.

21. That on or about April 23, 1981 affiant ran away from defendant's sisters house in Mexico City while defendant was at work, she went to the American Embassy where she found the plane ticket that had been sent by her mother.

22. That she then flew back to Racine, Wisconsin and arrived on April 24, 1981

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23. That affiant ran away because of the violent nature of the defendant; and based upon her observations while with him, she fears for the well being of his children.

[redacted]

Celia R. Jackson
Assistant District Attorney

Subscribed and sworn to before me this ___ day of April 1981.

[redacted]
Notary Public, Milwaukee County
My commission expires 4/10/83.

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Services for Battered Women
c/o 245 Hill St.
Santa Monica, CA 90405
(213) 399-9228

EXHIBIT 2

15 November 1980

To whom it may concern:

Justine Lopez and her 2 children, Anna, 2, and Linda, 1, were residents of our shelter for battered women and their children from 4/7/80 to 5/8/80. At the time of Justine's initial contact with the program she stated that Anna had been physically abused by her father. Both Justine and Anna had bruses at the time of entry to the shelter. Anna had bruses on her back and arms; Justine on her neck. Justine stated that t main reason she left her husband at the time she did was her fear of his continual abuse, both physical and mental, of Anna.

In our encounter with Justine and her children, we observed her to be both a patient and loving parent to both her children.

If there is anything I can do to help in this case, please contact me at (213) 399-9228.

Sincerely,

Ellen Friedman
Program Director
Sojourn Shelter for Battered Women

Mr. HUGHES. Our next witness is Marsha Elser, a practitioner from Florida, I believe, who has written a number of articles in the area of parental kidnaping.

And we are delighted to have you here. We have your statement, Ms. Elser; and you may summarize, if you wish.

TESTIMONY OF MARSHA ELSER, ESQ., PRIVATE PRACTITIONER, STATE OF FLORIDA

Ms. ELSER. Thank you, I will.

I practice family law. I deal with people on a regular basis whose children have been withheld after visitation or whose children have been snatched.

When we know the location of the child, the problem is relatively easy. There are mechanisms that I use without recourse to the Federal Government.

With the Uniform Child Custody Jurisdiction Act, which has now passed in 47 States, we can get relatively good results on the civil side.

With the full faith and credit provisions of the new act we should get greater results in those States that have not passed the uniform act.

Some of the States have felony statutes, and there you can get some effect.

It is when we don't know the location of the child that we have the greatest problem. When a parent comes into the office and says, "my child has been taken, I don't know where the child is. Help me find the child"—what do you do?

The remedies that are now available have been described by many of the witnesses in here today: the Federal Parent Locator Service—the problems discussed here earlier are greater than the ones I was prepared to advise the committee of. If they couldn't find Governor Brown, they certainly can't find my client's ex-spouse.

The fact is, the Parent Locator Service is only updated on a yearly basis, and that is a tremendous and cumbersome problem for the practitioner.

We have available to us the Family Educational Rights and Privacy Act, which makes available to the parent information about a child who has been removed from another State, if the child's school records have been requested.

If an abducting parent is attempting to keep a child and secrete the child, obviously, that is not a remedy that is a tremendous success.

We applaud the availability of the National Crime Information Center data source to locate children. However, the individual being sought must be stopped by a law enforcement official and then a check run on that individual's identity.

Of course, there are private means available: investigative services, private detectives. These are costly and in my experience almost not effective.

These methods are slow. I would like to be able to tell people who come to me for help that if we can't locate their children by

any of the means we have discussed, that we could rely on the Federal Bureau of Investigation.

That's great. The FBI has great appeal. Everybody is afraid of it.

I think with a little publicity, and the word getting out that the FBI has a serious attitude, and will seriously seek and find parents that have abducted children, I think it would be a tremendous success.

It is not happening now.

It is difficult enough for us to get State prosecutors to act in childnaping situations.

In my experience, and I come from the State of Florida, I was not surprised at Mr. Cheshire's report of the very few actions that were commenced in the eight circuits he reported about. I would venture to say that there were relatively few in Dade County, which is where I come from, the southern part of the State.

What is most disturbing to me, in addition to all of the things that I have included in my written report, even more so than the terrible concern that we all have about children and abusive parents, is the fact that the people who come in for help at my office, and at other practitioners' offices, often have had very little contact with courts and justice. Often the only contact they have ever had has been their divorce, perhaps a traffic ticket; and now a snatched child.

The victim parents, the ones that I have represented, are usually ordinary people, solid citizens; they vote, they pay taxes; they don't get involved with violent crime.

And they come to my office and they say, "What can I do? What can be done?"

And there isn't much I can tell them.

I am concerned because there is no respect for a law that the Congress has enacted.

I am concerned because the little person can't be expected to respect the law if it is not respected on the top. The respect has to come from here, first.

The people in Congress must give the law due respect, as well as the little people. Something is coming in between us both. And in this circumstance, it seems to be the Department of Justice.

They, too, must give that law respect if they expect it is to have any effect.

I can't do anything to make that law work, the law that you have made. I can't make it work, unless we get cooperation on all levels.

Thank you.

Mr. HUGHES. The gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

I appreciate your testimony as a private practitioner.

What about the State law enforcement officers—not only their respect for the law, but for obeying the law and helping shape the law? We are all in this together, you know.

I mean, if the State doesn't create a felony offense for child snatching, I don't know if we should say that automatically that the Federal Government has responsibility.

Ms. ELSER. Well, I believe that the present requirement is that there must be a felony statute in the State prior to section 10 coming into effect in the event of a snatch.

The State that I come from does have such a felony statute.

One of the problems that we have in dealing with these kinds of cases is the problem of attitudes. The State attorneys are reluctant to get involved.

If you get through that hurdle, and you get a State attorney to issue a warrant and press charges, then you have to go on to a second level and go through the U.S. attorney; and you then have to go through the Department in Washington.

There are so many hurdles.

What we need in the situation where we don't know where the child is, is speed. We have to find out quickly, or we will lose any opportunity we have for success.

I think what everybody loses sight of is that we are dealing with a crime: This is not a loving parent taking their child. This is a criminal act. This is somebody who has shown disregard for an order of court, who has disobeyed not only the court, but the State statute.

This is a criminal, this individual; and his acts must be treated as such.

Mr. CONYERS. What has been your experience with the local police, whom I presume could be called before you contact the prosecuting attorney?

Ms. ELSER. Generally the individuals who see me have already contacted the police. If the whereabouts of the individual who is withholding the child is known, on occasions the police will accompany the custodial parent if there is a certified copy of the court order, and assist in bringing the child home.

On some occasions locally we have obtained court orders directing the sheriff's department to accompany the parent to retrieve a child. In many circumstances, that is helpful.

It is where there is an attempt to remove the child from the State that I have had the most difficulty in getting charges pressed against the offending parent.

I am sorry, but I don't have any statistics for Dade County, and for our State attorney's office. But I say as a practitioner who specializes in family work in that county, that there are very few if any. I don't know of any cases that have been pressed by the State attorney that have been brought to trial.

I know personally I have attempted to have the State attorney issue arrest warrants in several cases, and have met tremendous resistance.

Mr. CONYERS. So the problem of creating respect for the law is not only at the Federal level, but at the local level as well?

Ms. ELSER. Absolutely.

I think we have a marvelous opportunity right here. You Congressmen have enacted a statute. You have made your intent very strong. And I think we can filter down some of your intent and attitudes to the local level.

If you all let everybody know that this is what you intend and this is what you are going to do, nobody is going to get in the way of that intent.

And I think we are on the road to some success.

Mr. CONYERS. Thank you.

Mr. HUGHES. I have several questions: First, it appears that there are still attorneys who advise their clients that in the absence of a custody order it is legal for them to snatch their children. From your experience, is that still common?

What steps is the organized bar taking to prevent attorneys from offering that kind of advice?

Ms. ELSER. The organized bar in the State of Florida—and I speak for that body as I am an officer of the family law section of the Florida Bar; and I have been accompanied here today by the president of the family law section.

We have done a tremendous amount of educating in our State on the ethical part of representing parents in these kinds of cases.

I think it is malpractice for an attorney to make such a recommendation to a client, particularly in light of the Uniform Child Custody Jurisdiction Act.

That act, in setting up jurisdictional records, of course prefers the home State. Regarding a parent who takes a child, absent any proceedings pending, and before an order has been entered, and goes to another State, I think that parent would be well able to commence an action even after the child has left the State under the requisites of the act.

These requisites are the same requisites that are in the Parental Kidnaping Act. Both the Parental Kidnaping Act and the Uniform Child Custody Jurisdiction Act seek to award attorneys' fees, trial expenses, and court court costs; and that is a deterrent.

And certainly an attorney who advises his client without letting them know that that is the law could be guilty of malpractice.

Mr. HUGHES. Thank you.

In the range of options that is open to a parent and his or her attorney after a case of parental kidnaping, where does the initiation of a criminal complaint fit in?

Ms. ELSER. I would say last.

Most parents who are the victim parent in an abduction, really want their children returned. That is their primary goal. They want the children returned. They want them returned safely.

Perhaps second to that, they want to be made whole again; because obviously they have gone through a great deal of legal expense.

Mr. HUGHES. Do you believe that it is an abuse of process to use criminal process to return children to the rightful custodian?

Ms. ELSER. No more than it is to use criminal process to return an automobile to its lawful owner.

Mr. HUGHES. Would it make any difference whether the offense is denominated parental kidnaping or criminal contempt?

Ms. ELSER. If criminal contempt is a felony, and that would fall into the requirements of the act, I don't feel that it would make any difference.

Mr. HUGHES. Thank you, Ms. Elser; we appreciate your testimony.

[The full statement follows:]

Prepared Statement of Marsha Barbanel Elser

INTRODUCTION

Why should you be interested in what the private practitioner has to say?

On March 27, 1981, I received a letter from Senator Malcolm Wallop concerning the Parental Kidnaping Prevention Act of 1980. This was not a personal letter to me, in fact it was addressed to "Dear Friend". Apparently, copies of this letter were sent to persons around the country who indicated interest and/or support for the passage of the subject legislation. Enclosed with the letter was a copy of the Act and an explanatory article concerning same. Senator Wallop's letter was attached to the back of this statement. His last comment was, "if you have specific legal questions about the effect of the law on your particular situation, your lawyer should be able to give you individualized legal advice."

Why should you be interested in what the private practitioner has to say? Because on March 27, 1981, while I and persons all over this country read the Senator's letter a child, perhaps ten children, possibly even fifty children were "snatched" and the parents from whom they were taken turned to me and my colleagues in every state for "individualized legal advice." They turned to us not to learn that states have enacted the Uniform Child Custody Jurisdiction Act to address the issue of full faith and credit as to custody decrees of foreign states and not to learn that the United States Congress has passed a piece of legislation entitled the Parental Kidnaping Prevention Act of 1980. Rather, they turned to us and asked, "Can you find my child? Can you get my child back?"

Why should you be interested in what the private practitioner has to say? Because you, and each and every one of those parents, deserve an answer to those questions.

FIRST STEPS

Generally, a victimized parent does not initially seek out the aid of an attorney following a "child snatch". The parent, intuitively sensing that a law has been violated, turns first to local and state law enforcement agencies for assistance. Sadly, it is all too often the lack of involvement and the detachment found by the parent at such agencies that ultimately turns the parent from the police station to the law office.

At this juncture the parent has learned that the police, overburdened by direct, violent crime, are less that charged into action by the tale of an "errant" parent who has "merely" taken one of his or her own children. The parent often meets undisguised resistance by the local state attorney in issuing arrest warrants or in pressing charges against what they consider to be nothing more than a "family squabble". Even in states such as Florida, where there are criminal statutes designed to deal with these situations, it is frequently the case that state prosecuting officials are loathe to become involved in matters of custody despite the fact that criminal statutes have been violated. At best, even a parent who encounters genuine concern and involvement on the agency level acquires little more than an understanding ear and an official-appearing piece of paper for, if the absent parent cannot be located there is simply no arrest to be made.

Such are the first answers that a parent receives to the seemingly elementary question, "can you get my child back?" The attorney has the unfortunate burden of adding to these painfully learned lessons the fact that, if the absent parent has left the state, the remedies available under the Uniform Child Custody Jurisdiction Act are cumbersome, oft-times lengthy and as often expensive. The parent no longer asks the "simple" questions but now asks, "what can be done?"

PARENTAL KIDNAPING PREVENTION ACT: REMEDIES FOR THE PARENT/VICTIM

A. Full faith and credit

Section 8 of the Parental Kidnaping Prevention Act mandates the enforcement and non-modification of child custody determinations in every state and jurisdiction when that determination has been made by a state executing jurisdiction consistent with the jurisdictional requisites of the Act. These jurisdictional requisites are substantially similar to those contained in the Uniform Child Custody Jurisdiction Act, except that the Parental Kidnaping Prevention Act expressly prefers custody determinations made in the "home state." (see, § 1738A(c)(2)(B)(i)).

From a practical point of view, the full faith and credit provision extends the requirement for enforcement of custody decrees in and by states of jurisdictions that have not yet passed the Uniform Child Custody Jurisdiction Act.

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This operates to preclude an abducting parent from seeking refuge in a state that has not adopted the UCCJA and obtaining a modification decree in that state. Despite the fact that the state giving refuge has not enacted jurisdictional statutes similar to the UCCJA, the state will nevertheless be required to enforce the custody decree of its sister state.

B. Federal parent locator service

Section 9 of the Parental Kidnaping Prevention Act offers the parent/victim another remedy. When the whereabouts of the abducted child are not known, the Parent Locator Service is available to help locate abducted children by using the Social Security number of the abducting parent and plugging that information into data banks of various federal agencies. The involved parent cannot himself approach the agency providing the parent locator service (in Florida, Health and Rehabilitative Services is the responsible agent). Rather, the attorney for the parent must apply to the court for an order directing or requesting the Federal Parent Locator Service to locate the parent and missing child.

While the practicing attorney must applaud the availability of this additional remedy to assist in the location of the abducting parent and missing child, the results may be somewhat disappointing. First, if the parent/abductor chooses to hide his identity and whereabouts by changing his Social Security number, the Federal Parent Locator Service will be ineffective. Further, even where applicable, this remedy is cumbersome and slow and often is not helpful since the information required to be placed in the data bank concerning the address of the abducting parent is only updated on a yearly basis. Thus, the last address of the absconding parent may be inaccurate.

As a practical example, consider the difficulties of attempting to trace an abducting parent. Two weeks after the child has been snatched the parent moves. It is unlikely that the abducting parent will leave a forwarding address. Because of the slow updating of data in the Federal Parent Locator Service, this remedy will not provide a speedy response to the question, "where has my child been taken?"

C. Fugitive Felon Act

The primary purpose of Section 10(a) of the Parental Kidnaping Prevention Act is to involve federal authorities in assisting state law enforcement agencies in locating and apprehending the abductor parent who has violated a state felony statute by removing a child from the jurisdiction.

The advent of this portion of the statute was heralded by all concerned interest groups. After numerous hearings, arguments, testimony and negotiations, Congress manifested a clear intent set forth in the body of Section 10(a), making the Fugitive Felon Act applicable to parental kidnappings that constitute felonies under state law.

Since the passage of this new statute, can the parent/victim be advised that the Fugitive Felon Act is an effective tool or remedy? No, not in light of the Justice Department's recent Report on Implementation of the Parental Kidnaping Prevention Act. That Report evidences a blatant disregard for the stated Congressional intent "that section 1073 of title 18, United States Code, apply to cases involving parental kidnapping and interstate or international flight to avoid prosecution under applicable State felony statutes."

Prior to December of 1980, when the Fugitive Felon Provision of the Parental Kidnaping Prevention Act of 1980 became effective, the Federal Bureau of Investigation became involved in "childnapping" situations only in rare instances where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent." As a result of the statute, Department policy was "revised" : the Department would comply with the requisites of the Act when, in its prosecutorial discretion" and after considering the "careful utilization of department manpower," the Department was convinced that there existed "independent credible information that the child was in physical danger or then in a condition of abuse or neglect." What is the difference? None. The new policy is as restrictive of Department involvement as the old policy was.

Practically speaking, the parent/victim is in a Catch-22 situation. To involve the Federal Bureau of Investigation, the parent must be unable to locate the abducting parent and abducted child. The parent/victim must also be able to give independent credible information establishing that the child is in physical danger or is being seriously neglected or seriously abused.

Query how can a parent/victim report the condition of a child whose whereabouts are not known.

One of the stated excuses of the Department of Justice for its non-involvement in child snatching cases is "the existence of conflicting child custody decrees in some cases . . ." There is no doubt than the existence of conflicting custody decrees is a problem. It is a problem that has been addressed by the Parental Kidnaping Prevention Act. It is a problem that is set forth in the findings and purposes which make this act necessary. The problem that the Act is designed to cure should not be used by the Justice Department as a device to avoid enforcement of the Act.

CONCLUSION

The report of the Justice Department correctly points out the availability of the Parent Locator Service as a tool for locating an abducting parent as well as the National Crime Information Center Data Source operated by the Federal Bureau of Investigation. Other mechanisms for locating the abducting parent and abducted child do exist. Other remedies are utilized and may be effective or ineffective in given situations. The availability of these other remedies should not preclude involvement of Federal law enforcement. The criminal portions of the Parental Kidnaping Act and particularly the availability of the Federal Bureau of Investigation as a remedial avenue and a valuable resource are the real teeth of this statute. Without the cooperation and assistance of the Federal Bureau of Investigation, the Parental Kidnaping Act may become a nullity.

Mr. HUGHES. The third and final panel of witnesses this afternoon are from the Department of Justice. I thank them for waiting patiently.

They are, Lawrence Lippe, Chief, General Litigation Section, Criminal Division of the Department of Justice, and Wayne R. Gilbert, Chief, Personal and Property Crime Section, Criminal Investigative Division of the Federal Bureau of Investigation.

Mr. Lippe brings to the Criminal Division extensive experience in government agencies, most recently as Assistant Inspector General for Investigations at the Department of Health, Education and Welfare, and as Director of the Special Investigations Staff at the Office of the Secretary of Labor. Prior to that Mr. Lippe had ten years of experience at various positions in the Department of Justice.

Mr. Gilbert has been with the FBI as a special agent since 1965, and has served in field and supervisory positions in Detroit, Albany, and Oklahoma City as well as several tours with the Criminal Investigative Division in Washington.

Gentlemen, we have your statements, and without objection they will be received in the record in full. And we hope you will be happy to summarize.

Mr. Lippe.

TESTIMONY OF LAWRENCE LIPPE, CHIEF, GENERAL LITIGATION AND LEGAL ADVICE SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE AND WAYNE R. GILBERT, CHIEF, PERSONAL AND PROPERTY CRIMES SECTION, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. LIPPE. Thank you, Mr. Chairman, I appreciate the opportunity of appearing here today to discuss these matters with you and the committee, and, hopefully, explain our policy, and clearly demonstrate that it is inconsistent with the sound exercise of prosecutorial discretion and the need for careful utilization of Departmental resoures and manpower to retain and involve the FBI in the parental kidnaping cases.

I believe I will also demonstrate that in an effort to respond to the intent of Congress as expressed in the Parental Kidnaping Pre-

vention Act, there has been a very noticeable increase in the level of FBI involvement in these matters.

I also will make an effort to clarify what I think is some confusion that I discern from the testimony of previous witnesses, and some of the questions and comments of the members of the committee, as to the appropriate and proper use of the unlawful flight to avoid prosecution statute.

I will, in an effort to present this in a precise way, read from parts of the prepared statement; but will make every effort to try to do that in a way that highlights the points we are trying to make.

It ought to be remembered that the Fugitive Felon Act, which is the act that would be brought to bear when Federal involvement is found to be appropriate, makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees.

So, therefore, to obtain an arrest warrant, there must be probable cause to believe that an individual has been charged with a State felony, and has fled from that State; and that his flight was for the purpose of avoiding prosecution.

I would like, here, to hopefully clarify a comment made earlier that the Department of Justice has improperly imposed the condition that there be evidence or a showing of interstate flight. That is a requirement of and an element under the statute.

Now, although, the statute was drawn as a penal statute, and, therefore, permits prosecution in Federal court for its violation, the primary purpose of the Fugitive Felon Act is to enable the Bureau, the FBI, to assist State law enforcement agencies in the location and apprehension of fugitives from State justice.

Therefore, prosecutions for violations of the Fugitive Felon Act are extremely rare. Indeed, none can be brought unless you have written approval of the Attorney General or an Assistant Attorney General of the United States.

That Act is not an alternative to interstate extradition.

It has been held, indeed, that an individual arrested on a Fugitive Felon warrant may not be removed from the asylum State under the Federal removal procedures, when no Federal prosecution is intended; because that kind of removal would circumvent valid State extradition laws.

At this point I might interject a response to the questions that were raised about the use of this statute when the so-called asylum State, or State in which the absconding parent has been located and found, refuses, for whatever reason, to honor the request of the requesting State under extradition procedures to return the parent who is located in that State.

It has been suggested, I think, if I fully appreciate some of the comments and the testimony, that the Federal arrest process be brought to bear under the UFAP statute.

We share the view of several of the State prosecutors who testified that that would be indeed a manifest, flagrant abuse of Federal process; and would be a circumvention, an improper circumvention, of the proper extradition procedures.

But when the FBI does locate and arrest an individual, we will, as I said—we won't remove him under rule 40; instead we will place that fugitive in the custody of local law enforcement authority in that asylum State to await the extradition request, or await waiver of extradition; and at the same time we promptly dismiss the UFAP warrant.

Again, if the asylum State does not honor the requesting State's request, there is no proper use of the UFAP statute in that situation.

I would also point out that under these procedures when there is Federal involvement, the Federal authorities do not get involved with the return or with the process by which the child is returned to the requesting State, or the parent in the requesting State.

Those are matters which the local authorities must work out with the aggrieved parent.

As a result of this, it is a policy that we require that any State law enforcement agency which requests assistance under that act, the UFAP statute, give us assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum State; and that it is their intention to bring him to trial on the State charges for which he is sought.

Similarly, the Bureau—or FBI—assistance will not be authorized once the location of the fugitive is known.

And as I stated before, if the State in which the absconding parent is found will not cooperate, it would at that point be inappropriate for the Federal Government to interject itself into a dispute between States in a child custody matter.

For at least 20 years this Congress has recognized, as evidenced in the legislative history associated with the Fugitive Felon Act that it is a vehicle solely in aid of the extradition process. It should not be used, we submit, Mr. Chairman, as a bludgeon for negotiations between either States or between parents; but should be used solely as it was intended to be used, that is, as an aid in the extradition process.

We assume that it continues to be the intent of Congress that the Fugitive Felon Act be used to assist the States in the serious criminal cases.

We also assume that Congress does not now intend that the Department engage in abuse of legal process by using the Fugitive Felon Act merely as a pretext for forcing compliance with child custody decrees.

In response to the expression of Congress by the passage of the Parental Kidnaping Prevention Act of 1980, we did reassess our policies on two separate occasions since the passage.

Our reassessment convinced us that for a variety of reasons it still remained inappropriate to bring the Federal criminal justice system to bear routinely on otherwise law abiding persons charged with violations of child custody decrees.

We are now, however, in an effort to accommodate the spirit of the act, authorizing the filing of a complaint under the Fugitive Felon Act, where, in addition to being satisfied that the elements of the act are met, there is also independent credible information that the child is in physical danger or is then in a condition of abuse or neglect.

By so expanding our Federal involvement in these cases, we expect to furnish an increased level—and have indeed furnished an increased level, as my figures will show you—of assistance to the States in the legitimate enforcement of their criminal laws.

And at the same time, we anticipate that we will avoid the improper utilization of what are very scarce Federal investigative resources, and the use of the Federal criminal process as a pretext for enforcing civil obligations.

We have not sought to develop any inflexible definitions of the term "independent, credible, information" that the child was then in a condition of abuse or neglect.

Instead, we have made every effort to articulate the meaning of that standard or criteria for the U.S. attorney in the field through the use of examples of cases in which we have authorized it. I think the kinds of cases in which we have authorized Federal involvement are quite illustrative and reflect that we are involving the Federal criminal mechanism in those cases where we are indeed dealing with what appears to be a sincere criminal complaint filed by the requesting State.

We are also demonstrating by these examples that it is not impossible, as some have suggested, to meet that standard.

We have had cases in which, for example, it has been demonstrated to us with relative ease that the parent was previously arrested for child abuse offenses; or that the parent has previously involved his son in child pornography; or that a parent is known to State law enforcement authorities as a serious drug abuser.

And I could go on with a number of other examples, all of which are set forth in my prepared statement; and I will not repeat at this time.

Mr. HUGHES. We have your statement.

Mr. LIPPE. Yes, I understand.

Since the passage of the act, we have authorized Federal involvement, authorized the U.S. attorneys to obtain a UFAP warrant in, as of September 2, 26 cases.

I am informed today that as of September 14, 3 more authorizations have been made, for a total of 29 authorizations.

We declined in 43 cases.

Going back to the 29 cases in which we have authorized Federal involvement, I might compare that to 1980, the calendar year, in which our best information reflects that only 3 cases warranted Federal involvement.

And in calendar year 1979 there was that Federal involvement authorized in eight cases. That, of course, as contrasted to the authorization of 29 cases in only a 9-month period since passage of the act in 1980.

I would also ask this committee to bear with me: as to the absolute accuracy of those figures, I would state that they are as accurate as a new reporting system can reflect; but might contain some minor errors—just that one caveat. They are relatively accurate as best we can determine.

As the committee has stated, our prepared statement is before the committee; I know it will be reviewed with care.

I think that perhaps in view of the hour that this committee perhaps has recognized that perhaps I should submit myself, either

now or after my colleague, Mr. Gilbert, summarizes his statement, at the chairman's discretion.

Mr. HUGHES. Thank you.

Mr. GILBERT. My statement is a little over a page long.

Rather than read it, I would just as soon have you accept it as it is, and open myself to questions.

Mr. HUGHES. First of all, Mr. Lippe, can you explain how the use of Federal removal procedures circumvents extradition?

Mr. LIPPE. A removal under the Federal removal statute is for prosecution of a Federal offense, in the Federal jurisdiction to which he would be removed.

We are not here dealing with a Federal offense.

To remove a person from State B to requesting State A under Federal procedures, where we have no intention of prosecuting for any Federal crime that has been committed—since none has been committed—merely as an accommodation to a State to prosecute under its criminal laws, when extradition fails, would be a flagrant abuse of the Federal authority.

Mr. HUGHES. You indicated that since last year you have authorized some 29—that is to date—felony warrants?

Mr. LIPPE. Yes, sir.

Mr. HUGHES. And declined 43?

Mr. LIPPE. That is correct, sir.

Mr. HUGHES. Am I to assume you have declined in the month of September?

Mr. LIPPE. Evaluation by the FBI reflects one declination since September 14.

The figures I have in my original statement were good, to the best of my knowledge, as of September 2. Some time between September 2 and my testimony today, there's been one further declination.

I might add that all of these declinations were not necessarily made in Washington.

Mr. HUGHES. Why was it felt necessary to have somebody in the Criminal Division of the Justice Department approve this here?

Do you follow that procedure in cases under the Felony Fugitive Act generally?

Mr. LIPPE. Not in other cases where the Felony Fugitive Act is used. We do require departmental approval for a wide variety of other prosecutions.

Mr. HUGHES. The U.S. attorneys exercise that discretion?

Mr. LIPPE. In this particular area, which is an emotional area, and frequently very complex, it was determined——

Mr. HUGHES. That U.S. attorneys aren't able to handle emotional and complex cases?

Mr. LIPPE [continuing]. It was determined that rather than see perhaps what might be 95 separate and disparate applications of this policy, that there be a national application of these principles.

Mr. HUGHES. Well, it seems to me you have that policy right now, don't you, throughout the United States—the declination policy on robberies is as divergent as you can get.

And I suspect that that's the case with most declinations.

So what makes parental kidnaping so different that it would require someone in the Criminal Division of the Justice Department to approve?

Mr. LIPPE. If I may clarify your statement, sir?

The authority to decline these matters is reserved to the U.S. attorneys. No approval of Washington is required for a declination.

Washington's role is brought to bear only in those instances in which the U.S. attorney feels that there is a basis, or may be a basis, for authorizing the warrant.

Mr. HUGHES. Well, I am thinking of drug cases, major drug cases; is it vested in the U.S. attorney's authority to decline jurisdiction in those areas?

Mr. LIPPE. That is correct. Declination. As is the case in bringing unlawful flight to—or authorizing—the declination of Federal involvement in these matters is reserved to the U.S. attorneys.

Mr. HUGHES. Well, it is when an authorization is concerned, then he has to come to you?

Mr. LIPPE. That is correct, sir.

Well, U.S. attorneys must come to us in a variety of other statutes; for example, before an indictment can be brought under the RICO statute, Washington's consultation is necessary.

Mr. HUGHES. And how about in other cases?

Mr. LIPPE. A variety.

If perjury is thought to have been committed on a trial resulting in acquittal, that has to come to us. A variety of cases must come to us. Obscenity prosecutions must first be discussed at the Washington level.

And I could read a variety of others. They are all set out in the U.S. attorneys' manual.

So in that regard, child—parental kidnaping matters, are not unique.

Mr. HUGHES. Where in the statute and the conference report do you find any language to indicate that we want the Justice Department applying the law in fugitive felony cases relative to parental kidnaping to require a standard that would suggest that the youngster is in some degree of harm?

Where do you find that?

Mr. LIPPE. We do not find that written in this statute, just the same as we do not find similiar kinds of criteria for the proper use of prosecutorial discretion in virtually every other criminal statute.

We have determined that it would be an inappropriate exercise of prosecutorial discretion to not establish certain criteria for that exercise. There must be, I believe—I have even heard one or more of the State prosecutor witnesses recognize that in enforcing this as well as many other laws—such criteria are appropriate.

Mr. HUGHES. But the law, as you have just indicated, is to aid State law enforcement agencies.

Now, look, there's nothing that I can see in the law or in the conference report that suggests we want you to second guess the States with regard to their criminal statutes.

That is what you have. You have created a new criteria, a new statute, in effect; which is not parental kidnaping.

It is child abuse.

Now, where do you find that—anywhere—in the statute, or in the conference report language, that would enable the Justice Department to establish that type of criteria?

If we intended to do that, we could have done it here.

Mr. LIPPE. The only appropriate way in which the Federal Government can involve itself in these matters, is when the elements of the unlawful flight to avoid prosecution statute are met—as I explained earlier.

Mr. HUGHES. Oh, yes, I have no argument with that. I have no argument with your aid of prosecution. There is no argument about that, as far as I am concerned.

My concern is over the way the Justice Department is totally ignoring the clear intent of the Congress.

Have you read the conference report?

Mr. LIPPE. I have, sir.

Mr. HUGHES. They call the manual illogical and largely irrelevant.

They referred to the language which they considered as not the intent of the Congress—it says that there be a serious risk to the child. How much clearer can it be? That was in the conference report.

Mr. LIPPE. Mr. Chairman, we have an obligation, also, to follow the clear intent of the UFAP statute, as evidenced in its legislative history. We took the only lawful basis for Federal involvement.

And I submit that when there is the absence of any sort of abuse, neglect or danger, that certainly has a bearing on whether or not the requesting State is indeed going to prosecute this matter; is it indeed going to go through the extradition process; and is it going to carry out its other responsibilities which are necessary for us to properly aid in the extradition process; and therefore properly bring the UFAP statute to bear.

I have heard testimony that it is rare for the State to prosecute in these cases, for a variety of reasons.

Our own experience demonstrates, and my statement points out a number of examples, where once the parent is located, the criminal, the State criminal process goes away; and the return of the child is negotiated.

Mr. HUGHES. Let me just interrupt you there.

I heard you use the term sincere, credible complaint. Now, you know, that discourages me; because all of a sudden you are putting yourself in a position of trying to judge what a local prosecutor who you admit has final responsibility, is going to do with that case.

You want to concede they are complex, emotional cases. So how can you suggest, first of all, that you are doing what we want you to do to enforce the statute, which is to aid prosecution, when you are going to second guess whether the prosecutors really mean to prosecute.

You don't ask, if I understand it, on the warrant whether or not they are going to extradite?

Mr. LIPPE. Oh, yes, sir; that——

Mr. HUGHES. Is that so?

Mr. LIPPE. Yes, sir.

Mr. HUGHES. I stand corrected.

But in the final analysis the Fugitive Felony Act is an aid in prosecution, and if a State decides that a parental kidnaping is a felony, I think it the height of arrogance for the Federal Government to suggest that the State is insincere or that the State may have no rationale.

Look, I know you don't want to come across as arrogant, but that's what comes across.

Mr. LIPPE. Let me suggest, sir, that that's not the sole basis of our determination; but it is a basis in that I cannot determine the intent of any individual, because I can't go inside his head, obviously.

However, I can bring to bear, and my senior colleagues who assist me in these decisions, can bring to bear years of experience in which we can demonstrate that when cases do not bear elements of danger, or there are not elements of abuse and neglect, those cases simply are not prosecuted.

What, I suggest, will be the prosecutorial determination of the State prosecutors when there is no element of danger, abuse, or neglect?

Mr. HUGHES. What body of data do you have to submit to this committee as to that?

Mr. LIPPE. I do not have hard data with me now. I can assure this committee that with respect to the 29 authorizations since the passage of the act, the FBI—correct me if I am wrong in this tabulation—will, either has or will instruct all of its offices to track those matters in which these authorizations have been granted to determine ultimately what the disposition was.

I can say that of the 26 that were authorized, only one extradition has so far resulted; but I don't want to criticize the States in the other 25 at this juncture, because the process is still open.

I cannot state with any degree of accuracy how many of those remaining 25 of which I am aware will result at this time.

I can only rely on experience.

I can also say, sir, that it is not an inappropriate act on the part of the Department to establish the abuse and neglect criteria in its allocation of resources which is a consideration any time we are exercising our prosecutorial discretion.

It is our responsibility, indeed, I think, our duty, to effectively utilize Federal resources. And I think it not unreasonable of us to establish those criteria.

And let me just add, also in connection with the determinations that are made that necessarily involve our judgment concerning the ultimate—what may be the ultimate disposition at the state level.

I can assure this committee that I, my staff, the FBI, and supervisors and chiefs and their staff, in Washington work with us—we do not make the decision lightly. We do not make it off a mere record, in almost every case. Indeed, we read not a statistical report, which is done after the fact—that is not our basis at all.

We read detailed reports from FBI field offices, we read detailed letters, in many cases, from assistant U.S. attorneys in the field who are working on the matter; we direct inquiries of our own by telephone. We have lengthy conversations with both the U.S. attor-

ney and in many cases with the State's attorney's people who are making the request.

It is a very deliberative process.

And I sense, and I wanted to lay that to rest, that there is no flip decision being made in any of these cases. They are too important, and we regard them as important.

Mr. HUGHES. You know, I appreciate that. And I commend you for the fairness in which you review the cases.

In fact I think you are so fair on them, in reviewing the cases, that you totally ignored—and I use that word more than advisedly—the clear intent of the Congress.

You have just walked away from what was struck by the Congress in the conference report. Read the language.

You can read it today. And you'd have to do a lot of dancing around to get around it today. Because it is very clear. It says: "specifically the conferees expressly disapprove of the policies of the Department of Justice as set forth in section 9-59.421 of the United States Attorney's Manual to limit the application of 18 U.S.C. section 1073 to those parental kidnaping situations where there is a showing"—and et cetera—"the threat of physical injury to the child."

Sir, you have ignored this. You have ignored that.

Now, what do you want? Do you want us to pass a Federal statute, make it a Federal offense? Is that what we have to do?—Can't we get the message through to you?

The gentleman from Michigan?

Mr. CONYERS. Well, could we begin with a response to the chairman's last question?

Mr. LIPPE. We have not assessed or reviewed any recently submitted or about to be submitted criminal statutes.

Mr. HUGHES. You are going to have one, very soon.

Mr. LIPPE. And I am not prepared at this time; I am not prepared to speak as to what the administration's position would be.

I am sure the committee is aware of the position of the Department of Justice in response to previously submitted similar bills.

I, personally, speaking as an individual, would adhere to the position against criminalization of these matters, as I have articulated before.

Mr. HUGHES. Will the gentleman yield?

Well, you are going to get a bi-partisan criminal statute. That is what you are going to get.

I mean, this, the policy of the Justice Department, is really an affront to the Congress. We view what you've done. And the posture from a clear intent as expressed in the conference committee has been struck down and compromised by the Justice Department.

Mr. LIPPE. Sir, I can only suggest that if it was the intent of the Congress in passing the act, that we properly and faithfully applied the unlawful flight to avoid prosecution statute as it was intended.

And I can only say that we are making every sincere effort to do that; and not to abuse that process.

Mr. HUGHES. Will the gentleman yield further?

If in fact the people in the country wanted you to decide the law, they would have elected you.

What you have decided is, you have decided, you know, to have the law you want to write and enforce; not the law that we wanted to write, and have enforced.

Mr. LIPPE. We believe, sir, that we are enforcing the unlawful flight to avoid prosecution statute as it is written. And I am making every effort not to abuse its use.

Mr. HUGHES. You show me—you show me where in the unlawful flight to avoid prosecution statute there is any language to suggest that as a condition precedent a parent has to show that the child is in jeopardy.

You show me where.

It was never intended for you to second-guess State legislatures, and Governors, and State prosecutors on this issue.

And that is what you have done. What you have done is you have subverted your law for ours and that was never intended. Don't tell me that that's the law. That was never the intent.

Thank you.

Mr. CONYERS. You are more than welcome, Mr. Chairman.

I think you have shown a dramatic increase in the number of cases where Federal authority has been approved. I think we should give credit where credit is due: 3 to 29 isn't bad.

And maybe that number will continue to increase and thus satisfy this committee and the Congress that you do read the law and enforce it.

Is that not one possibility?

Mr. LIPPE. I would agree with the member from Michigan.

We are making every effort, and I believe those figures demonstrate those efforts, to respond in a responsible way, in a responsible law enforcement way, to what we believe was the will of Congress in passing the act of 1980.

I am sure reasonable people can disagree on some aspects of the implementation.

Mr. CONYERS. Well, when you are in an agent's position, you try harder. More reading of the statute; rereading the conference report one more time; bringing in new lawyers.

You were here last year?

Mr. LIPPE. That is correct, sir.

Mr. CONYERS. How long have you been in charge of the General Litigation Section?

Mr. LIPPE. Since the spring of 1979.

Mr. CONYERS. So the more we keep going over this, maybe the more hearings we have, and bringing in your whole section, all of the chiefs, assistants, maybe this helps? And then everybody begins to come to more and more unanimity about this elusive intent of Congress, and this incredibly complex piece of legislation, which has created so many readings.

So I hold out hope. I am full of optimism on this subject, that some fortuitous circumstance will evolve.

I am sure the chairman is not understating the mood of Congress.

Mr. HUGHES. I regret that the television cameras have left. It is a rare occasion for the gentleman to be defending the Justice Department. That's an interesting switch. It should be recorded.

Mr. CONYERS. Well, I deal in evenhanded gestures, Mr. Chairman. I put myself not in a position of defending the Department of Justice, but of holding out some ultimate hope that maybe they'll come around. I am not predicting they will.

I hope the Attorney General will take note of the remarks made by the chairman about this; but I don't know. Maybe they won't.

It might be this will be considered to be another pro forma march to the Hill:

> We will go into the barrel and take our whack, and then we will come back out, and maybe then they will be busy with other matters. After all, this is domestic relations; they'll get involved in something else—white collar crime, the riots act—and that will get us through the present session of Congress.

I can't predict the reaction of the Department of Justice. These are the two emmissaries before the committee.

They have heard the testimony of this proceeding and all of the material introduced for discussion, the added documents.

Now, isn't it fair to say, gentlemen, that the big problem is you just don't have the resources? It's not that you can't interpret the arcane language of Congress, but it is just that we don't have the troops, we don't have the manpower. It would release a barrage of responsibility that would put us in even more of an embarrassing light than we are considered to be in now.

Is that a fair statement?

Mr. GILBERT. The resources of the FBI are very definitely a factor.

Mr. HUGHES. Well, they can't answer the phone in the Colorado office after 5:30.

Mr. GILBERT. I assure you, that will be looked into. That is unacceptable.

It is also a fact that we have 180,000 felony fugitives in the NCIC at the present time, and we presently have about 1,600 unlawful flight cases we are working on, the most violent offenders, sex offenders and murderers, drug traffic, and this type of thing.

So manpower is very definitely a consideration.

Mr. CONYERS. Well, the Congress is not unaccustomed to the resources problem. This isn't something new or rare. They experience it at the Pentagon, the Department of Agriculture, food stamps—everybody is coming up short these days.

So if you were to candidly express that, we would not be in shock, or disarray, or inflicting our wrath. We would say, well, then, we have a responsibility to try and get the administration to provide the means for you to do what you should do.

That is the way we increase resources.

What do you say, Mr. Lippe?

Mr. LIPPE. As I stated earlier, Mr. Conyers, clearly the criteria that were developed about which there has been debate today and in the past, are in part, in large part, have functioned as a necessary exercise of our prosecutorial discretion so as to preserve and most effectively use what are our very, very scarce investigative resources.

I could not agree more. I think to do otherwise would be a violation of our responsibilities.

Mr. CONYERS. There is nobody asking you to spring manpower which does not in fact exist right now.

Could we generate some studies from you of the operations that would indicate to us how many more people you would require to deal with this problem, if we came to an agreement on the intent and spirit of the language that we have written. I think that would be appropriate. It would be helpful for you and it would be helpful for us.

We need some projection of what you might be confronted with. If there were a fourfold increase, what would happen in terms of greater numbers? Is there a possibility we could get an indication on that from your office?

Mr. GILBERT. That is not my field, but it would be difficult to separate it from any other unlawful flight category, difficult to separate it from the murderers and sex offenders, and et cetera.

It would take a substantial study to break that information out, timewise, agent-use, et cetera, et cetera.

We would have to start at some point, but it would be 2 or 3 years down the road before any meaningful statistics could be developed.

Mr. CONYERS. You are not an authority in this type of study, are you?

Mr. GILBERT. No, that's just off the top of my head.

Mr. CONYERS. All right.

And what about you?

Mr. LIPPE. I would not hold myself out as an expert, either, in statistical production, Mr. Conyers. I just don't want to mislead this committee.

Mr. HUGHES. Will the gentleman yield?

It has been indicated there would be about 5,000 additional cases and an additional cost of $5 to $7 million.

Mr. CONYERS. Are you aware of that?

Mr. LIPPE. Without reviewing the previous testimony—

Mr. CONYERS. That was testimony.

Mr. LIPPE. I wouldn't want to say it is in the ballpark.

Mr. CONYERS. If you go back and take that as a beginning point, we might be able to generate some—to get some figures much sooner than several years; maybe several weeks?

I am hoping that this can and will be done as a part of the followup of your responsibilities to this hearing.

When a citizen calls to file a complaint to the Federal law enforcement authority, can a citizen call the U.S. attorney's office and say, I've got a case?

Mr. LIPPE. Yes, that citizen can.

Mr. CONYERS. Will that citizen be told, I am sorry, I have to call the FBI, because they investigate all of that, and we are not able to determine that or conduct the investigation?

Is that statement ever, often, or frequently asserted?

Mr. LIPPE. If the citizen calls the U.S. attorney's office to report what sounds like it may be a Federal offense, that assistant U.S. attorney will typically get some more facts during the course of the conversation, and ultimately either call the person and take that person over to the FBI or refer the person to the FBI—depending on the nature of the offense that is being described.

Now, does your question go to what will typically happen in a parental-child abduction situation?

Mr. CONYERS. Yes.

Mr. LIPPE. In those situations, again, I can see a variety of scenarios.

If the parent calls and says there is no child custody decree, or even if there is a child custody decree, that the husband has absconded; again, if that is all the parent said, for example, there is no way under any standard that we could become involved, since there is no outstanding felony warrant issued by the State.

If we were in a State in which it constituted a felony, it is my understanding that the assistant U.S. attorney or FBI, if they are the ones who received the call, will explain and outline for that person what all is necessary for there to be consideration by the Federal Government as to its involvement.

There are probably variations on that. But that is generally what our understanding is.

Now, if that person ultimately presents the matter to a State prosecutor, and resulting from that is issuance of a State felony warrant, then the Federal process, both the U.S. attorney and the FBI, can consider the matter.

But if it is a walk in parent with no State process yet brought to bear, there isn't a whole lot we can do at that point except explain.

Mr. CONYERS. Thank you.

Mr. Gilbert, on page 2 you state, "Notwithstanding these differences, however, once a parental abduction case has been reviewed and FBI involvement authorized, we vigorously investigate it and attempt to resolve it as quickly as possible."

Who is it that authorizes that FBI involvement?

Mr. GILBERT. Ultimately, it is the Department.

Mr. HUGHES. Who in the Department?

Mr. GILBERT. The U.S. attorney.

Mr. CONYERS. OK.

So in Denver, Colo., the FBI would call the U.S. attorney in Denver, or the U.S. attorney in Washington?

Mr. GILBERT. The U.S. attorney would generate and submit the facts to the Justice Department; if the U.S. attorney had authority, he would issue the warrant and contact our office.

Mr. CONYERS. If the FBI in Denver were to notify the U.S. attorney?

Mr. GILBERT. I would like to think in most cases that would happen. I am sure sometimes it doesn't. It does not meet the statute, it does not meet the criteria of UFAP then they may advise the individual what needs to be done, and refer him to the D.A. It may not go to the U.S. attorney.

Mr. CONYERS. Are you an attorney?

Mr. GILBERT. No, sir.

Mr. CONYERS. Most FBI agents are attorneys?

Mr. GILBERT. More than half, I would say.

Mr. CONYERS. So in support of the procedure the local FBI in Denver would hopefully discuss this matter with the U.S. attorney in Denver?

Mr. GILBERT. If it met the criteria of UFAP.

Mr. CONYERS. Now the U.S. attorney in Denver has to go to Washington; this approval rests in Washington?

Mr. LIPPE. The approval is in Washington.

Mr. CONYERS. So you can disapprove your head off, but you can only get an OK upstairs?

Mr. LIPPE. That is correct.

Mr. HUGHES. To follow up, give us an idea of how many declinations occur?

Mr. LIPPE. Since the passage of the act of 1980 we are dealing with 76 cases, which are what remained from the 472 requests.

Of those, when you factor out the 396 that were lacking a critical legal element under the UFAP statute, of those 76, again, without—it is my current appreciation of our involvement in the matter, we, FBI headquarters, D.C. and my operation, were involved in the vast majority of those 76, but not all of them.

I would sincerely like to be more specific; I just can't.

Mr. HUGHES. We will keep the record open, so see if you can submit that information.

Mr. Lippe. If it can be obtained, we certainly will make every effort to obtain it.

Mr. HUGHES. Tell us another offense in which you would propose, another UFAP abuse requirement?

Mr. LIPPE. I cannot offhand think of any offense that falls within the category of a parental kidnaping offense.

Mr. HUGHES. Where a State has opted to prosecute and needs assistance, where else have you required some additional criteria to be met, other than the usual criteria?

Mr. LIPPE. The criteria we apply are essentially that we be satisfied that there is an intent to prosecute and extradite, or extradite and prosecute, in that order.

Mr. HUGHES. My question now is: in what other offense areas do you require a State to show something else in addition to meeting the elements of the substance of the crime? Where else do you require they show something such as abuse as you do here?

Mr. LIPPE. I cannot speak to that, for every potential offense which is treated under UFAP; because my section, my people do not get involved heavily in every situation. We are involved in the vast majority of them, but not all.

And I would sincerely like to be more specific, but I just can't.

Mr. HUGHES. We will keep the record open to get that information. It would help.

Mr. LIPPE. If it can be obtained, we will certainly make every effort to get it. I am not personally aware of other offenses where we have set internal criteria as we have been discussing here.

[See appendix, letter of December 18, 1981, from Robert A. McConnell to Rep. William J. Hughes.]

Mr. HUGHES. Do you know if there are any others?

Mr. GILBERT. I can't think of any except possibly in the juvenile area.

Mr. HUGHES. What other offenses under UFAP require the Criminal Division of the Justice Department to approve them?

Mr. LIPPE. I cannot think of any at this time. If there are any, we will certainly submit them on the record.

Mr. HUGHES. The record will be held open for that.

Mr. Gilbert, what are the FBI guidelines for field offices for advice on complaints about child snatching?

Mr. GILBERT. They will interview the complainant, obviously; ascertain the facts in the case, and if they don't meet the required criteria for issuance of a UFAP warrant, this will be explained to the individual.

And of course they would be counseled to consult with their own attorney, and ultimately with the District Attorney, which is where the action has to be initiated.

Mr. HUGHES. You heard Mrs. Uhlman testify?

Mr. GILBERT. That someone hung up on the phone; yes, I did hear that, sir.

Mr. HUGHES. Is that the first time you heard that?

Mr. GILBERT. Yes, sir, it is.

Mr. HUGHES. Would you check that for us?

Mr. GILBERT. I certainly will. It will not be tolerated.

Mr. HUGHES. Well, I think we have probably completed everything we can do here today.

I just want to make a couple of observations: First, I don't have to tell you that we have enough problems with public relations from the way various people proceed in the various agencies of the Government. The testimony today isn't the best. And this is not an isolated incident.

We are going to conduct other hearings. We are going to begin to look at new legislation seriously.

In that posture, I thank you, and I appreciate your testimony; and look forward to working with you as you develop what you perceive is the intent of Congress.

Thank you.

[The full statement follows:]

PREPARED STATEMENT OF LAWRENCE LIPPE

Thank you for the opportunity of appearing here today to discuss with the Subcommittee the implementation of the Parental Kidnaping Prevention Act of 1980, as it relates to the Fugitive Felon Act (18 U.S.C. § 1073).

As you know, in Section 10 of the Act, Congress expressly declared its intent that the Federal Fugitive Felon Act apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes. Since passage of the Act, our policy limiting FBI involvement in parental kidnapings has been reviewed, modified, and made less restrictive. As a result, there has been an increase in the level of FBI involvement in these cases, when compared with the level of involvement before passage of the Act. For a variety of reasons, however, we believe there is a demonstrated need for policy limitations on the use of the Fugitive Felon Act in parental abduction situations. Today I hope to explain our policy and clearly demonstrate that it would be inconsistent with the sound exercise of prosecutorial discretion and the need for careful utilization of Department manpower and resources to routinely involve the FBI in parental kidnaping cases.

The Fugitive Felon Act makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees. To obtain an arrest warrant, there must be probable cause to believe that an individual charged with a state felony has fled from that state and that his flight was for the purpose of avoiding prosecution.

Although drawn as a penal statute and, therefore, permitting prosecution in Federal court for its violation, the primary purpose of the Fugitive Felon Act is to enable the FBI to assist state law enforcement agencies in the location and apprehension of fugitives from state justice. Therefore, prosecutions for violations of the Fugitive Felon Act are extremely rare. In fact, the statute prohibits prosecution unless formal written approval of the Attorney General or an Assistant Attorney General is obtained.

The Fugitive Felon Act is not an alternative to interstate extradition. It has been held that an individual arrested on a Fugitive Felon warrant may not be removed

from the asylum state under Rule 40, F.R.Cr.P., when no Federal prosecution is intended, because removal would circumvent valid state extradition laws. *United States* v. *Love*, 425 F. Supp. 1248 (E.D.N.Y. 1977). When the FBI locates and arrests an individual on a Fugitive Felon warrant, the fugitive is not removed under Rule 40, Federal Rules of Criminal Procedure. The FBI simply places the fugitive in the custody of law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the Fugitive Felon warrant is promptly dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance under the Fugitive Felon Act give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring him to trial on the state charges for which he is sought. Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding and request law enforcement authorities in the asylum state to place the fugitive in custody until there has been a resolution of the extradition proceeding. For at least the past 20 years, Congress has recognized that the Fugitive Felon Act is a vehicle in aid of the extradition process; and that FBI involvement is to be limited to those serious criminal cases in which the state has demonstrated sufficient interest in obtaining return of the fugitive to warrant incurring the necessary expenses incident to extradition. H.R. Rep. No. 827, 87th Congress 1st Session (1961). We assume it continues to be the intent of Congress that the Fugitive Felon Act be used to assist the states in serious criminal cases. We also assume that Congress does not now intend that the Department engage in abuse of legal process by using the Fugitive Felon Act merely as a pretext for forcing compliance with child custody decrees.

It has been a longstanding policy of the Department to avoid involving Federal law enforcement authorities in domestic relations disputes, including parental abduction situations. This policy had been based, in part, on the parental abduction exception in the Federal kidnaping statute, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department did not authorize FBI involvement under the Fugitive Felon Act for the purpose of apprehending a parent charged with a state felony, such as custodial interference, which arose out of the abduction of that parent's own minor child. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

In response to the expression of Congressional intent in the Parental Kidnaping Prevention Act, our policy was twice reassessed. Our reassessment convinced us that, for a number of reasons, it remained inappropriate to bring the Federal criminal justice system to bear routinely on otherwise law abiding persons charged with violations of child custody decrees. Nevertheless, to accommodate the intent of Congress, we now authorize the filing of a complaint, under the Fugitive Felon Act, where, in addition to having probable cause to believe an abducting parent, charged with a state felony, has fled from the state to avoid prosecution, and a commitment from the state to extradite and prosecute has been received, there also is independent credible information that the child is in physical danger or is then in a condition of abuse or neglect. By expanding Federal involvement to cases involving abuse or neglect, we expect to furnish an increased level of assistance to the states in the legitimate enforcement of their criminal laws. At the same time, we hope to avoid the utilization of FBI investigative resources and the use of Federal criminal process as a pretext for enforcing civil obligations.

In implementing our guidelines, we have not formulated an inflexible definition of the words "condition of abuse and neglect." An inflexible definition might lead to the arbitrary denial of relief through the mechanical application of the standard. Instead, we have, in our communications to the United States Attorneys, given concrete illustrations of the factors to be considered.

In most cases the complaining parent or local law enforcement officials contact the local office of the FBI or the United States Attorney, where the case receives an initial screening. Those cases in which there is no probable cause basis for the filing of an unlawful flight complaint, or in which there has been no law enforcement request for assistance, and those cases which clearly do not meet the guidelines, may be declined by the U.S. Attorney's Office. The declination is, of course, without prejudice to renewal upon the development of further evidence. Cases that appear to satisfy the requisites for a Fugitive Felon complaint and to meet the guidelines are forwarded to the Department for authorization. The review in the Criminal Division

often reveals that the requirements of the Fugitive Felon Act and the commitment to extradition were lacking and that there was no basis for filing a Fugitive Felon complaint, wholly apart from the guidelines.

Our guidelines require independent credible information of abuse or neglect that is of a continuing nature, as opposed to an isolated episode devoid of lasting consequences in which the abducting parent may have deviated from generally accepted standards of parental care.

By way of illustration, the following are some of the circumstances that were determined to warrant FBI involvement:

(1) Parent previously arrested for child abuse offense.

(2) School principal stated that children had been beaten by the abducting parent.

(3) Parent previously involved son in child pornography.

(4) Parent had several drunk driving convictions and was travelling great distances by automobile with an infant child.

(5) Parent known to state law enforcement authorities as a serious drug abuser.

(6) Parent lost custody of child after court determination that parent was unable to provide adequate supervision and care.

(7) Parent, a known drug dealer and associate of a motorcycle gang, previously abducted child and left child unattended for long periods of time.

(8) Parent and child believed to be residing with psychotic, drug addicted, violence prone relative.

(9) Welfare department report indicated that while in the custody of the abducting parent, the child was poorly clothed, was not being bathed, had hair infested with lice, and possibly was malnourished.

(10) Court took custody away from parent based on an allegation of neglect; school principal stated children were malnourished; police officer stated abducting mother's boyfriend was an emotionally unstable sex offender.

(11) Abducting parent, a member of a motorcycle gang, had a long history of violent conduct, including serious beating and abuse of his children.

(12) Abducting parent had a history of emotional instability, and the child was epileptic and required daily medical attention.

(13) Abducting parent threatened suicide and stated he would take the child to heaven with him.

By way of contrast, we have declined to authorize FBI involvement based only on information that the abducting parent had an unconventional life style, such as a communal living arrangement with a religious cult or employment as an itinerant musician. Similarly, we have not authorized FBI involvement in several cases in which the claim of abuse or neglect was based solely on the fact that no request was made to forward school records, from which it might be inferred that the children are not attending school. However, such information has been considered along with other information concerning abuse or neglect in cases where FBI involvement was authorized.

Recently, a request for FBI assistance was received from a North Carolina prosecutor. The state prosecutor urged that FBI assistance was imperative because this was the second abduction. The abducting parent was residing in Maryland with the child. It was determined that the Maryland authorities refused to honor the North Carolina felony warrant on the basis that the abducting parent was being "harassed" by North Carolina authorities. FBI involvement was not authorized because the Fugitive Felon Act is not a device to circumvent the extradition process.

In another recent case, there was sufficient evidence of abuse to bring the case within our policy guidelines. However, the state prosecutor advised he could not promise to extradite the subject because decisions to extradite are made by a committee in the State Attorney General's office. Apparently, under the state's policy, extradition generally is not authorized in parental abduction cases. We advised that FBI assistance would be authorized if the state gave a definite commitment to extradite and prosecute.

Several requests for FBI assistance have been made in situations where the abducting parent was known to be residing in a foreign country. The issuance of a Fugitive Felon warrant in such situations is not appropriate because no extradition treaty makes unlawful flight to avoid prosecution an extraditable offense. In addition, it is our understanding that the views of almost all of our treaty partners is that child custody questions are essentially domestic law matters which should be handled through civil remedies not through criminal sanctions.

As you know, the FBI was assigned responsibility for compiling the necessary data to comply with the reporting requirements of the Act. It was decided that in keeping with the spirit of the Act, the FBI would compile data on all complaints

alleging parental abductions, rather than limiting the data to requests received from state law enforcement agencies.

We have been informed that as of September 2, 1981, a cumulative total of 472 requests were received in 57 FBI field offices covering 45 states as well as Puerto Rico and the Virgin Islands. One hundred twelve of the requests involved abductions that occurred prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the Act. Of the total of 472 requests, 396 did not come from local law enforcement officials or involved situations in which there was no probable cause to believe the abducting parent fled interstate to avoid prosecution for a felony. Typically, in these cases, there was no violation of a custody decree; no charge had been filed; or the parent was not charged with a felony; or there was no evidence of interstate travel.

Therefore, of the 472 requests received, only 76 involved requests from state or local law enforcement agencies for assistance under the Fugitive Felon Act. As of September 2, 1981, consistent with our policy guidelines, FBI involvement was authorized in 26 cases and declined in 43 cases. The FBI's preliminary data is incomplete as to the remaining seven requests. In the cases authorized, the FBI has arrested five individuals and local authorities have arrested seven others. A total of 14 children have been located.

We are aware that our policy guidelines limiting FBI involvement in parental kidnapings are perceived by some to be inconsistent with the expression of Congressional intent in Section 10 of the Act. It has been suggested the Department has incorrectly characterized parental kidnapings as being essentially domestic relations controversies and that we should authorize FBI involvement in these cases based on the same standards and policies that would be applied to other state felony charges.

From a practical law enforcement perspective, we believe we cannot routinely involve the FBI in "child-snatching" situations based on the same criteria that would be applied to other state felonies such as murder or armed robbery. A "child-snatcher," very simply, is different from the ordinary felon fleeing from state justice, as evidenced by the fact that some fifteen jurisdictions either do not criminalize child-snatching or treat it as a misdemeanor.

Moreover, abducting parents, unlike fleeing murderers and robbers, generally do not present a continuing threat of violence to society. In this regard, routine involvement in parental kidnapings necessarily would divert the FBI's limited resources away from fugitive cases involving violent criminals as well as from organized crime, white collar crime, public corruption and violent offense investigations.

Our experience in child-snatching matters, both before and since passage of the Act, suggests the possibility that state prosecutors sometimes charge an abducting parent with a felony merely as an accommodation to the complaining parent, with no intention of ultimately prosecuting the abducting parent. Over the past several years, we have authorized FBI involvement in a significant number of these cases, consistent with policy guidelines. We have found that in repeated instances, the state felony charges against the abducting parent were dropped shortly after the complaining parent regained custody of the child. We were, of course, unaware of the state prosecutor's intent, when we authorized the complaint. We suggest that the use of the Fugitive Felon Act in situations where state authorities have no actual intention of prosecuting the underlying felony charge would amount to an abuse of legal process.

In recent months, a variety of parental kidnaping cases have come to our attention which, in our view, confirm the need for policy limitations. In two cases, the abducting parents were, in effect, given temporary custody in the asylum states despite outstanding felony "child-snatching" warrants in other states. In two other cases, parents were charged with felonies in spite of the fact that they had custody decrees granted in other states. It appears that some states treat parental kidnapings as quasi civil in nature, even though it may be classified as a felony under state law. In our view, no legitimate criminal law enforcement purpose would be served by involving the FBI in such situations.

Numerous requests for FBI assistance have been made in situations where the locations of the abducting parents were known but law enforcement authorities in the asylum state refused to honor the out-of-state felony warrants, possibly because the asylum states classified "child-snatching" as a misdemeanor. In addition, we are aware of at least two cases where the asylum state refused extradition. It appears that the requests for FBI assistance in these situations were simply attempts to avoid the extradition process.

Even cases which, on the surface, appear to come within our guidelines, nevertheless, require very close scrutiny. The following three situations illustrate some of the problems we have encountered:

(1) The abducting father was charged with a Massachusetts felony offense which specifically alleged that the abduction occurred under circumstances that endangered the child's safety. The Massachusetts prosecutor requested FBI assistance, promising to extradite the fugitive if arrested.

Further inquiry ascertained that the abducting father originally obtained custody of the child in Alabama, with visitation rights to the mother. Subsequently, when exercising those rights, the mother took the child to California. While in California, she obtained a decree giving her custody, with visitation rights to the father. When the father's turn for visitation came, he took the child to Massachusetts where he had obtained a new job. The mother brought a custody suit in Massachusetts. Rather than litigate the matter, the father returned to Alabama where he originally obtained custody. The address of the abducting father was known to both the Massachusetts prosecutor and the mother. In fact, it appears that the mother actually visited the child in Alabama.

We declined FBI assistance in this case. If the Massachusetts authorities are determined to proceed with the criminal prosecution, they may initiate extradition proceedings and request Alabama authorities to arrest the abducting father and hold him in custody until resolution of the extradition proceeding.

(2) The State of Illinois charged a mother with felony child stealing and requested FBI assistance under the Fugitive Felon Act. Numerous allegations were made indicating that the children were being seriously abused by the mother and her boyfriend.

Further inquiry ascertained that the abducting mother took the children to Mississippi. Illinois authorities attempted to have the child stealing warrant executed in Mississippi, but law enforcement authorities there refused. The father went to Mississippi and initiated a custody proceeding. At the initial hearing, the judge apparently refused to honor the Illinois arrest warrant, and permitted the mother to retain custody until the next hearing date, in effect, granting temporary custody to the mother. The judge also ordered an investigation of the mother's fitness by a local welfare agency.

Between the first hearing and the date for the second hearing, the mother became involved in an altercation with a relative of the father, which resulted in the mother being charged with assault by Mississippi authorities. The mother, the boyfriend and the children then left Mississippi for Florida, and apparently there were no further custody proceedings in Mississippi. Nevertheless, the report of the welfare investigation was favorable to the mother.

Subsequently, the mother and the children were located in Alabama. A copy of the Illinois arrest warrant was sent to Alabama, but officials there refused to arrest the nother. The allegations of abuse were reported to welfare authorities in Alabama. Apparently some investigation was conducted, and it was concluded the children appeared to be in reasonably good health.

The father then went to the mother's residence in Alabama in a self-help effort to regain custody of the children. He succeeded in taking one of the children. The mother's boyfriend, however, attempted to stop the father from departing. An altercation ensued in which gunshots were fired. The father departed for Illinois with one of the children. Subsequently, the father was charged with assault with a dangerous weapon by the State of Alabama. Consequently, the father is not at liberty to return to Alabama.

FBI involvement in this case was declined because the whereabouts of the fugitive mother is known. Very simply, this is an extradition matter between Illinois and Alabama. There is no need for an FBI fugitive hunt.

(3) The State of Utah charged a mother with a felony child custody offense and requested FBI assistance. Information was received that at the Utah custody proceeding there was evidence the mother used corporal punishment to discipline the children.

Further inquiry ascertained that the mother was separated from her husband and took the children to New Mexico where she established residence. The father went to New Mexico, found the chidren and returned to Utah, where he obtained a custody decree. Pursuant to visitation privileges granted in the Utah decree, the children visited the mother in New Mexico, where she obtained a New Mexico custody decree. Utah authorities issued a felony warrant for the mother's arrest, and we understand New Mexico refused extradition. FBI assistance was sought at this point. We declined FBI assistance in this situation. Again, the Fugitive Felon Act is not a device to circumvent extradition laws.

In our view, routine involvement of the FBI in parental kidnaping situations will not further a genuine criminal law enforcement purpose. Accordingly, we believe strongly that there is a demonstrated need for policy limitations in these cases.

Our present policy guidelines are an effort to comply with Congressional intent by extending Federal involvement to cases involving abuse or neglect. Consistent with our other criminal law enforcement responsibilities, we fully expect to furnish increased assistance to the states in the legitimate enforcement of their criminal laws.

STATEMENT

OF

WAYNE R. GILBERT
CHIEF, PERSONAL AND PROPERTY CRIMES SECTION
CRIMINAL INVESTIGATIVE DIVISION
FEDERAL BUREAU OF INVESTIGATION

Thank you Mr. Chairman. We appreciate having the opportunity to discuss this important issue with you.

Mr. Lippe has presented a factual and thorough summary of the Federal Government's current involvement in parental kidnaping cases. We in the FBI work closely with Department of Justice attorneys in reviewing each case of this type which comes to our attention and which appear to meet the necessary criteria for FBI assistance.

As in other matters within our jurisdiction, each case is evaluated to determine that legitimate and proper reasons exist to justify a Federal investigation. The FBI does not have the resources to investigate every case referred to it. Policies, guidelines, and certain minimum standards are necessary for nearly every type of crime we are authorized to investigate. Without such guidelines we would be required to investigate every violation within our jurisdiction regardless of how technical or minor it may be. In fairness to the people we serve and in an effort to logically address the most serious offenses in which we have jurisdiction, such policies and guidelines have become a necessity in almost all investigations of criminal activity.

We recognize the emotional trauma which accompanies a parental abduction case. Apart from discharging our responsibilities as a professional law enforcement agency, we take little satisfaction in arresting and incarcerating a mother or father whose crime was to be with a beloved child. As Mr. Lippe mentioned, there is a basic difference between a parent who illegally kidnaps his or her own child out of a motive of love, and a felon who kills, rapes, or robs out of a motive of hate, desire, or profit.

Notwithstanding these differences, however, once a parental abduction case has been reviewed and FBI involvement authorized, we vigorously investigate it and attempt to resolve it as quickly as possible. Those cases are ranked in the highest priority within our Fugitive Program and are afforded continuous, preferred attention. We have thus far effectively discharged our responsibilities in this area and in full recognition of the spirit and intent of the Parental Kidnaping Prevention Act, and will continue to do so in the future.

Mr. HUGHES. The hearing stands adjourned.

[Whereupon, at 5:55 p.m., the hearing was adjourned.]

APPENDIX

1/21/81

June 21, 81

TELEGRAPHIC MESSAGE

MADE UP AGENCY: DEPARTMENT OF JUSTICE GENERAL LITIGATION & LEGAL ADVICE SECTION, CRIMINAL DIVISION LL:AFN:mep	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION 1B 1317	DATE PREPARED DECEMBER 31, 1980	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME ARTHUR F. NORTON	PHONE NUMBER 202-724-7526	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: ALL UNITED STATES ATTORNEYS

RE: PARENTAL KIDNAPING PREVENTION ACT OF 1980

ON DECEMBER 28, 1980, HR 8406, THE PARENTAL KIDNAPING PREVENTION ACT OF 1980, WAS SIGNED INTO LAW. ESSENTIALLY THE BILL CONTAINS THREE PROVISIONS INTENDED TO AMELIORATE THE PROBLEM OF "CHILD SNATCHING."

THE FULL FAITH AND CREDIT PROVISION IN THE ACT (SECTION 8), PROVIDES THAT APPROPRIATE AUTHORITIES IN EVERY STATE SHALL ENFORCE ACCORDING TO ITS TERMS, AND SHALL NOT MODIFY, EXCEPT IN LIMITED CIRCUMSTANCES, ANY CHILD CUSTODY DETERMINATION MADE CONSISTENT WITH THE PROVISIONS OF SECTION 8 OF THE ACT.

SECTION 9 OF THE ACT EXPANDS THE USE OF THE PARENT LOCATOR SERVICE IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES SO THAT IT CAN BE USED TO LOCATE A PARENT OR CHILD FOR THE PURPOSE OF ENFORCING ANY STATE OR FEDERAL LAW WITH RESPECT TO THE UNLAWFUL TAKING OR

SECURITY CLASSIFICATION

PAGE NO.	NO. OF PGS
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STANDARD FORM 16
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-33.306

16-102

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

RESTRAINT OF A CHILD, OR MAKING OR ENFORCING A CHILD CUSTODY DETERMINATION.

SECTION 10 OF THE ACT CONTAINS AN EXPRESSION OF CONGRESSIONAL INTENT THAT 18 U.S.C. 1073 (INTERSTATE FLIGHT TO AVOID PROSECUTION) APPLY TO CASES INVOLVING PARENTAL KIDNAPINGS AND INTERSTATE OR INTERNATIONAL FLIGHT TO AVOID PROSECUTION UNDER APPLICABLE STATE FELONY STATUTES. SECTION 10 FURTHER REQUIRES THAT THE ATTORNEY GENERAL SUBMIT PERIODIC REPORTS SETTING FORTH STEPS TAKEN TO COMPLY WITH THIS EXPRESSION OF CONGRESSIONAL INTENT. AMONG OTHER THINGS, EACH REPORT MUST CONTAIN DATA RELATING TO THE NUMBER OF APPLICATIONS UNDER 18 U.S.C. 1073 INVOLVING PARENTAL KIDNAPING AND THE NUMBER OF COMPLAINTS ISSUED.

IT HAS LONG BEEN DEPARTMENT POLICY TO AVOID INVOLVEMENT IN SITUATIONS WHICH ARE ESSENTIALLY DOMESTIC RELATIONS CONTROVERSIES. THIS POLICY HAS BEEN BASED, IN PART, ON THE PARENTAL ABDUCTION EXCEPTION IN THE FEDERAL KIDNAPING STATUTE,

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14-102

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

FROM WHICH WE INFERRED A CONGRESSIONAL INTENT THAT FEDERAL LAW ENFORCEMENT AUTHORITIES STAY OUT OF SUCH CONTROVERSIES. CONSISTENT WITH THAT POLICY, THE DEPARTMENT DID NOT AUTHORIZE FBI INVOLVEMENT UNDER 18 U.S.C. 1073, FOR THE PURPOSE OF APPREHENDING A PARENT WHO IS CHARGED WITH A STATE FELONY IN CONNECTION WITH THE ABDUCTION OF HIS OWN MINOR CHILD, AND WHO HAS TRAVELED INTERSTATE TO AVOID PROSECUTION. IN SOME INSTANCES THE DEPARTMENT HAS MADE EXCEPTIONS TO THIS POLICY WHERE THERE WAS CONVINCING EVIDENCE THAT THE CHILD WAS IN DANGER OF SERIOUS BODILY HARM AS A RESULT OF THE MENTAL CONDITION OR PAST BEHAVIOR PATTERNS OF THE ABDUCTING PARENT. SEE U. S. ATTORNEYS' MANUAL §9-69.421.

CONGRESS NOW HAS EXPRESSLY STATED THAT 18 U.S.C. 1073 BE APPLIED IN PARENTAL ABDUCTION SITUATIONS. CERTAINLY, IN OUR VIEW, THIS EXPRESSION OF CONGRESSIONAL INTENT DOES NOT REQUIRE ROUTINE FEDERAL INVOLVEMENT IN PARENTAL ABDUCTION SITUATIONS AND IS CONSISTENT WITH THE DEPARTMENT'S GENERAL POLICY

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF PASSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

MILITATING AGAINST FEDERAL INVOLVEMENT IN DOMESTIC MATTERS INCLUDING ABDUCTION SITUATIONS. FURTHERMORE, THE SOUND EXERCISE OF PROSECUTORIAL DISCRETION AND THE NEED FOR CAREFUL UTILIZATION OF DEPARTMENT MANPOWER AND RESOURCES, WILL REQUIRE SELECTIVITY IN SEEKING FEDERAL FUGITIVE WARRANTS IN THESE SITUATIONS.

THE PRIMARY PURFOSE OF THE FUGITIVE FELON ACT (18 U.S.C. 1073) IS TO PERMIT THE FEDERAL GOVERNMENT TO ASSIST IN THE LOCATION AND APPREHENSION OF FUGITIVES FROM STATE JUSTICE. IN EVALUATING ANY REQUEST FROM STATE OR LOCAL AUTHORITIES FOR ASSISTANCE UNDER THE FUGITIVE FELON ACT, THERE MUST BE PROBABLE CAUSE TO BELIEVE THAT A FUGITIVE CHARGED WITH A STATE FELONY HAS FLED INTERSTATE AND THAT HIS FLIGHT WAS FOR THE PURPOSE OF AVOIDING PROSECUTION. FURTHERMORE, IT MUST BE CLEAR THAT STATE OR LOCAL AUTHORITIES ARE DETERMINED TO TAKE ALL NECESSARY STEPS TO SECURE THE RETURN OF THE FUGITIVE AND THAT IT IS THEIR INTENTION TO BRING HIM TO TRIAL ON THE

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE FILED/TIME	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	
THIS SPACE FOR USE OF COMMUNICATION UNIT		
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)		

TO:

STATE CHARGE FOR WHICH HE IS SOUGHT. IT HAS BEEN OUR EXPERIENCE THAT STATE PROSECUTORS OFTEN WILL CHARGE AN ABDUCTING PARENT WITH A FELONY AS AN ACCOMMODATION TO THE VICTIM PARENT, WITH NO REAL INTENTION OF ULTIMATELY PROSECUTING THE ABDUCTING PARENT. THEREFORE, EFFORTS SHOULD BE MADE TO IDENTIFY THOSE REQUESTS WHICH SEEK TO USE THE INVESTIGATIVE RESOURCES OF THE FBI TO COMPEL THE DISCHARGE OF CIVIL OBLIGATIONS, RATHER THAN SERVING A LEGITIMATE CRIMINAL LAW ENFORCEMENT PURPOSE.

IN AN EFFORT TO FULFILL CONGRESSIONAL INTENT CONSISTENT WITH ITS OTHER RESPONSIBILITIES, THE DEPARTMENT WILL AUTHORIZE FBI INVOLVEMENT UNDER 18 U.S.C. 1073 IN PARENTAL KIDNAPING CASES WHERE THERE IS INDEPENDENT CREDIBLE INFORMATION ESTABLISHING THAT THE CHILD IS IN PHYSICAL DANGER OR IS BEING SERIOUSLY NEGLECTED OR SERIOUSLY ABUSED. EXAMPLES OF INDEPENDENT CREDIBLE INFORMATION INCLUDE POLICE INVESTIGATIONS OR PRIOR DOMESTIC COMPLAINTS TO POLICE OR WELFARE AGENCIES.

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TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE FILED/SED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

IN VIEW OF THE REPORTING REQUIREMENTS OF SECTION 10 OF THE ACT, IT IS IMPERATIVE THAT THE LOCAL OFFICE OF THE FBI BE TELEPHONICALLY SUPPLIED WITH INFORMATION REGARDING EACH PARENTAL KIDNAPING DIRECTLY REFERRED TO THE UNITED STATES ATTORNEY'S OFFICE SO THAT THE FBI MAY GATHER DATA FOR THE LEGISLATIVELY REQUIRED REPORTS.

IN ORDER TO MAINTAIN A UNIFORM NATIONAL POLICY, AND IN VIEW OF THE DEPARTMENT'S GENERAL POLICY AGAINST INVOLVEMENT IN DOMESTIC RELATIONS CONTROVERSIES, CRIMINAL DIVISION AUTHORIZATION STILL MUST BE OBTAINED BEFORE SEEKING A FUGITIVE FELON WARRANT IN PARENTAL ABDUCTION SITUATIONS. ATTORNEYS FAMILIAR WITH THIS POLICY ARE AVAILABLE ON 724-7526 OR 6971.

LAWRENCE LIPPE, CHIEF
GENERAL LITIGATION AND
LEGAL ADVICE SECTION
CRIMINAL DIVISION

SECURITY CLASSIFICATION		
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GSA FPMR (41 CFR) 101-35.304

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Sent
6-26-81

TELEGRAPHIC MESSAGE

NAME OF AGENCY	ROUTING	SECURITY CLASSIFICATION
DEPARTMENT OF JUSTICE GENERAL LITIGATION & LEGAL ADVICE SEC. CRIMINAL DIVISION L:AFH:mwp	ACTION: INFO	
ACCOUNTING CLASSIFICATION 181317	DATE TRANSMITTED JUNE 18, 1981	TYPE OF MESSAGE ☐ SINGLE ☐ BULK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
(Name) ARTHUR F. NORTON	PHONE NUMBER 202-724-7526	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

ALL UNITED STATES ATTORNEYS

RE: PARENTAL KIDNAPINGS - FUGITIVE FELON ACT

REFERENCE IS MADE TO DEPARTMENT TELETYPE DATED JANUARY 21, 1981, CAPTIONED PARENTAL KIDNAPING PREVENTION ACT OF 1980.

IN THE REFERENCED TELETYPE AND IN A SUBSEQUENT REVISION TO SECTION 9-69.421 USAM, THE DEPARTMENT'S POLICY GUIDELINES CONCERNING PARENTAL KIDNAPING MATTERS WERE REVISED AS A RESULT OF ENACTMENT OF THE PARENTAL KIDNAPING PREVENTION ACT OF 1980 (P.L. 96-611), WHEREIN CONGRESS EXPRESSLY DECLARED ITS INTENT THAT THE FUGITIVE FELON ACT, 18 U.S.C. 1073, APPLY TO CASES INVOLVING PARENTAL KIDNAPINGS AND INTERSTATE OR INTERNATIONAL FLIGHT TO AVOID PROSECUTION UNDER APPLICABLE STATE FELONY STATUTES.

IN RESPONSE TO THIS EXPRESSION OF CONGRESSIONAL INTENT, OUR POLICY GUIDELINES LIMITING FEDERAL INVOLVEMENT IN PARENTAL KIDNAPING CASES WERE MADE LESS RESTRICTIVE

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14-102

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACKNOWLEDGE CLASSIFICATION	DATE FILED/TIME	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL PHONE	PERSON NUMBER	

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

BY PERMITTING FBI INVOLVEMENT IN SUCH CASES UNDER THE FUGITIVE FELON ACT WHERE THERE WAS "INDEPENDENT CREDIBLE INFORMATION ESTABLISHING THAT THE CHILD IS IN PHYSICAL DANGER OR IS BEING SERIOUSLY NEGLECTED OR SERIOUSLY ABUSED." AS IN THE PAST, CRIMINAL DIVISION APPROVAL WAS REQUIRED BEFORE A FUGITIVE FELON WARRANT IN A PARENTAL KIDNAPING CASE COULD BE SOUGHT.

OUR POLICY GUIDELINES HAVE BEEN CRITICIZED BY INDIVIDUAL CONGRESSMEN AND OTHERS AS BEING INCONSISTENT WITH THE INTENT OF CONGRESS. ESSENTIALLY, THE CRITICS ASSERT THAT THE DEPARTMENT HAS WRONGLY CHARACTERIZED PARENTAL KIDNAPINGS AS DOMESTIC RELATIONS DISPUTES, AND URGE THAT THE FBI SHOU[illegible] ROUTINELY AUTHORIZED TO ENTER THESE CASES BASED ON THE SAME CRITERIA AS WOULD BE APPLIED TO OTHER STATE FELONY CHARGES.

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TELEGRAPHIC MESSAGE

TO: FBI AND/OR AGENCY	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION
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FBI INFORMATION CALL		
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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

BECAUSE OF THESE CONCERNS, A REVIEW OF OUR POLICY GUIDELINES WAS RECENTLY UNDERTAKEN IN THE CRIMINAL DIVISION. BASED ON THIS REVIEW, WE BELIEVE THERE IS A DEMONSTRATED NEED FOR POLICY LIMITATIONS ON FEDERAL INVOLVEMENT IN PARENTAL KIDNAPING CASES UNDER THE FUGITIVE FELON ACT. IN AN EFFORT TO SATISFY THOSE HOLDING A MORE EXPANSIVE CONCEPT OF THE INTENT OF CONGRESS, BUT WITH DUE REGARD FOR OUR OTHER CRIMINAL LAW ENFORCEMENT RESPONSIBILITIES, WE HAVE AGAIN MODIFIED OUR POLICY GUIDELINES. WE WILL NOW AUTHORIZE FBI INVOLVEMENT WHERE THERE IS "INDEPENDENT CREDIBLE INFORMATION ESTABLISHING THAT THE CHILD IS IN PHYSICAL DANGER OR IS THEN IN A CONDITION OF ABUSE OR NEGLECT.

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TELEGRAPHIC MESSAGE

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

UNDER THE NEW GUIDELINES, WE STILL HOPE TO AVOID UTILIZING FBI INVESTIGATIVE RESOURCES TO ENFORCE CIVIL OBLIGATIONS. FURTHER, CRIMINAL DIVISION APPROVAL WILL CONTINUE TO BE REQUIRED BEFORE FILING A FUGITIVE FELON COMPLAINT IN A PARENTAL KIDNAPING CASE.

BECAUSE OF THE DIFFICULTY IN FORMULATING A WORKING DEFINITION OF THE TERM "CONDITION OF ABUSE OR NEGLECT," DETERMINATIONS AS TO WHETHER PARTICULAR CASES COME WITHIN OUR GUIDELINES WILL CONTINUE TO BE MADE ON A CASE-BY-CASE BASIS IN THE CRIMINAL DIVISION. AS A GENERAL RULE, HOWEVER, OUR GUIDELINES WILL REQUIRE INDEPENDENT CREDIBLE INFORMATION OF ABUSE OR NEGLECT THAT IS OF A CONTINUING NATURE AS OPPOSED TO AN ISOLATED EPISODE, DEVOID OF LASTING CONSEQUENCES, IN WHICH THE ABDUCTING PARENT MAY HAVE DEVIATED FROM GENERALLY ACCEPTED STANDARDS OF PARENTAL CARE.

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

IN THE PAST FIVE MONTHS WE HAVE AUTHORIZED FBI INVOLVEMENT IN AT LEAST 13 PARENTAL KIDNAPINGS. BY WAY OF ILLUSTRATION, THE FOLLOWING ARE A FEW OF THE CIRCUMSTANCES WHICH WERE DETERMINED TO WARRANT FBI INVOLVEMENT: PARENT PREVIOUSLY ARRESTED FOR CHILD ABUSE; PARENT PREVIOUSLY INVOLVED SON IN CHILD PORNOGRAPHY; PARENT HAD SEVERAL DRUNK DRIVING CONVICTIONS AND WAS TRAVELING GREAT DISTANCES BY AUTOMOBILE WITH INFANT CHILD; PARENT KNOWN TO STATE LAW ENFORCEMENT AUTHORITIES AS A NOTORIOUS DRUG ABUSER; PARENT LOST CUSTODY OF CHILD AFTER COURT DETERMINATION THAT PARENT WAS UNABLE TO PROVIDE ADEQUATE SUPERVISION AND CARE; PARENT, A KNOWN DRUG DEALER AND ASSOCIATE OF A MOTORCYCLE GANG, PREVIOUSLY ABDUCTED CHILD AND LEFT CHILD UNATTENDED FOR LONG PERIODS OF TIME; PARENT AND CHILD BELIEVED TO BE RESIDING WITH PSYCHOTIC, DRUG ADDICTED, VIOLENCE-PRONE RELATIVE; WELFARE DEPARTMENT REPORT INDICATED CHILD WAS POORLY CLOTHED, WAS NOT BEING BATHED, HAD HAIR INFESTED WITH LICE, AND WAS POSSIBLY MALNOURISHED.

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

BY WAY OF CONTRAST, WE HAVE DECLINED TO AUTHORIZE FBI INVOLVEMENT BASED ONLY ON INFORMATION THAT THE ABDUCTING PARENT HAD AN UNCONVENTIONAL LIFE-STYLE, SUCH AS A COMMUNAL LIVING ARRANGEMENT WITH A RELIGIOUS "CULT" OR EMPLOYMENT AS AN ITINERANT MUSICIAN. SIMILARLY, WE HAVE NOT AUTHORIZED FBI INVOLVEMENT IN A NUMBER OF CASES, WHERE THE CLAIM OF ABUSE OR NEGLECT WAS BASED SOLELY ON THE FACT THAT NO REQUEST WAS MADE TO FORWARD THE CHILD'S SCHOOL RECORDS, FROM WHICH IT MIGHT BE INFERRED THAT THE CHILD WAS NOT ATTENDING SCHOOL. HOWEVER, SUCH INFORMATION WILL BE CONSIDERED ALONG WITH OTHER INFORMATION ON THE QUESTION OF ABUSE OR NEGLECT.

WE EXPECT THAT THE NUMBER OF REQUESTS FOR FEDERAL INVOLVEMENT IN PARENTAL KIDNAPINGS WILL INCREASE IN THE MONTHS AHEAD. OUR EXPERIENCE INDICATES THAT THESE REQUESTS MUST BE SCRUTINIZED CAREFULLY. IT APPEARS THAT

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

STATE PROSECUTORS OFTEN WILL CHARGE AN ABDUCTING PARENT WITH A CRIMINAL OFFENSE AS AN ACCOMMODATION TO THE ABDUCTING PARENT, WITH NO INTENTION OF ULTIMATELY PROSECUTING THE CRIMINAL CHARGE AGAINST THE ABDUCTING PARENT. WE HAVE FOUND IN REPEATED INSTANCES THE CRIMINAL CHARGES AGAINST THE ABDUCTING PARENT HAVE BEEN DROPPED SHORTLY AFTER THE COMPLAINING PARENT REGAINS CUSTODY OF THE CHILD. WE BELIEVE THAT USE OF THE FUGITIVE FELON ACT IN SITUATIONS WHERE STATE AUTHORITIES HAVE NO ACTUAL INTENTION OF PROSECUTING THE UNDERLYING CRIMINAL CHARGE WOULD AMOUNT TO AN ABUSE OF LEGAL PROCESS.

IN RECENT MONTHS, A VARIETY OF PARENTAL KIDNAPING CASES HAVE COME TO OUR ATTENTION WHICH, IN OUR VIEW, CONFIRM THE NEED FOR POLICY LIMITATIONS. IN TWO CASES THE ABDUCTING PARENTS WERE, IN EFFECT, GIVEN TEMPORARY CUSTODY IN THE [illegible] ASYLUM STATES DESPITE OUTSTANDING FELONY "CHILD SNATCHING" WARRANTS ISSUED IN OTHER STATES.

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TEXT TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

IN TWO OTHER CASES, PARENTS WERE CHARGED WITH FELONIES IN SPITE OF THE FACT THEY HAD CUSTODY DECREES GRANTED IN OTHER STATES. IT APPEARS THAT SOME STATES TREAT "CHILD SNATCHING" AS QUASI CIVIL IN NATURE EVEN THOUGH IT MAY BE CLASSIFIED AS A FELONY UNDER STATE LAW. IN OUR VIEW, NO LEGITIMATE CRIMINAL LAW ENFORCEMENT PURPOSE WOULD BE SERVED BY INVOLVING THE FBI IN SUCH SITUATIONS.

A NUMBER OF CASES HAVE COME TO OUR ATTENTION IN WHICH THE LOCATIONS OF THE ABDUCTING PARENTS WERE KNOWN, BUT LAW ENFORCEMENT AUTHORITIES IN THE ASYLUM STATE REFUSED TO HONOR THE OUT-OF-STATE "CHILD SNATCHING" WARRANTS, POSSIBLY BECAUSE THE ASYLUM STATES CLASSIFIED "CHILD SNATCHING" AS A MISDEMEANOR. IN ADDITION, WE ARE AWARE OF AT LEAST TWO CASES IN WHICH THE ASYLUM STATE REFUSED EXTRADITION. THE REQUEST FOR FBI ASSISTANCE IN THESE SITUATIONS APPARENTLY WAS AN EFFORT TO AVOID THE EXTRADITION PROCESS. THE FUGITIVE FELON ACT IS NO AN

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

ALTERNATIVE TO EXTRADITION, AND INDIVIDUALS ARRESTED ON A FUGITIVE FELON WARRANT SHOULD NOT BE REMOVED FROM THE ASYLUM STATE UNDER RULE 40 F.R.Cr. P., WHERE NO FEDERAL PROSECUTION IS INTENDED. SEE UNITED STATES V. LOVE, 425 F. SUPP. 1248 (S.D.N.Y. 1977), AND SECTION 9-69.450 USAM.

ATTORNEYS FAMILIAR WITH OUR PARENTAL KIDNAPING POLICY ARE AVAILABLE ON FTS 724-7526, 724-6971, AND 724-6893.

LAWRENCE LIPPE, CHIEF
GENERAL LITIGATION AND
LEGAL ADVICE SECTION
CRIMINAL DIVISION

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Testimony
of
Senator Alan Cranston

before

Subcommittee on Crime
Committee on the Judiciary
United States House of Representatives

September 24, 1981

I appreciate this opportunity to offer testimony on the implementation of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611) with respect to section 10 of the Act which provides for the application of section 1073 of title 18 of the United States Code -- the Unlawful Flight to Avoid Prosecution (UFAP) Statute -- to parental kidnaping cases.

I was an original cosponsor of legislation introduced by Senator Malcolm Wallop, S. 105, which formed the basis for Public Law 96-611, chaired two of the Senate hearings on this legislation, and served as the chairman of the conference committee on H.R. 2977 which developed the compromise provisions that were enacted as section 10 of Public Law 96-611.

Section 10, as enacted, represents a reasonable and workable approach to dealing with interstate -- and international -- parental kidnaping cases. Primary responsibility for prosecution of these cases is retained by state law enforcement officers and the federal role is one of providing federal assistance to state law enforcement officers when interstate flight to avoid state prosecution is involved.

Unfortunately, the Department of Justice, in its policy guidelines issued in January and subsequently revised following the objections of many of the Congressional supporters of this legislation, has failed to carry out Congressional intent in implementing the provisions of section 10. Indeed, much of what we sought to accomplish in the Parental Kidnaping Act of 1980 has been undermined by the Department of Justice's persistent refusal to implement the provisions of section 10 along the lines intended by the Congress.

Congressional intent underlying section 10 was clearly and unequivocally expressed in the conference report accompanying H.R. 2977. The conferees stated on page 43 of that report that "It is the Conferee's view that section 1073 should be applied to state felony parental kidnaping cases in the same manner as to any other state felony case where the other jurisdictional requirements of section 1073 are satisfied."

Clearly, the Department's policy of applying additional requirements such as physical danger to the child or evidence of child abuse or neglect constitute requirements above and beyond those requirements imposed on other state felony cases and is in direct contravention of intent of the Congress that section 1073 apply to parental kidnaping cases in the same manner as it does in other state felony cases.

The Department of Justice continues to regard parental kidnaping cases as "domestic disputes". A recent review of state statutes related to parental kidnaping conducted for me by the Congressional Research Service indicated that all but 10 states (Alabama, Delaware, Hawaii, Kentucky, Maryland, New Hampshire, New Jersey, Pennsylvania, South Dakota and Utah) have enacted legislation which classifies all or some of these cases as felonies. Additionally, the Congressional Research Service indicated that 84.2 percent of the population of the United States resides within states which have enacted some sort of felony statute to deal with parental kidnaping. The vast majority of states treat parental kidnaping as a criminal matter. But state law enforcement officers have limited ability to enforce these state laws when interstate flight to avoid prosecution is involved. My own state of California has one of the strongest parental kidnaping statutes in the nation. Yet, California law enforcement officers are unable to provide meaningful assistance to the victims of these crimes once state boundaries have been crossed. Section 10 of Public Law 96-611 was designed to ensure the application of the UFAP statute to parental kidnaping cases and to provide state law enforcement officers with the federal assistance in apprehending interstate fugitives from justice which is available in every other felony case. Unfortunately, the Department of Justice has refused to carry out the provisions of section 10 of Public Law 96-611 as clearly intended by the legislation.

STATEMENT OF SENATOR MALCOLM WALLOP
Before The
House Judiciary Committee Subcommittee on Crime

Oversight Hearing on the Implementation of the
Parental Kidnapping Prevention Act of 1980
September 24, 1981

My sincere thanks to you, Mr. Chairman, and to your distinguished colleagues for convening this timely and important hearing on the implementation of the Parental Kidnapping Prevention Act of 1980, an act with which I have been associated from its inception. Since the law was passed last December, my staff has been monitoring its implementation by the Department of Health and Human Services and by the Department of Justice, and has been tracking to a more limited extent the private custody litigation pending in state courts involving the new law. As the original sponsor of S. 105, the bill from which sections 6-10 of Public Law 96-611 are substantially derived, I note at the outset my considerable disappointment with the failure of the Justice Department to conform its Fugitive Felon Act policies to the express language and legislative history of section 10 of the new law. If this hearing sparks a correction on the part of the Criminal Division and the F.B.I. with respect to the issuance of Unlawful Flight to Avoid Prosecution ("UFAP") warrants in state felony parental kidnapping cases involving interstate or international flight as the law requires, in my opinion it will prove to have been an extremely constructive proceeding, indeed.

The Parental Kidnapping Prevention Act ("PKPA") was enacted on December 28, 1980 to safeguard countless children from the harmful effects of child snatching, the wrongful removal or restraining of a child by a parent or parent's agent in violation of a custody decree or in violation of the other parent's rights as a

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joint custodian where a custody determination has not yet been made. The PKPA grew out of S. 105, a bill I introduced on January 23, 1979, which was modeled upon an amendment I had successfully offered to S. 1437, the criminal code reform legislation considered by the Senate in the 95th Congress. By the end of the 96th Congress, a bipartisan group of 25 senators had cosponsored S. 105, and over 60 House members had cosponsored H.R. 1290, a companion measure introduced by Representative Charles Bennett.

In January, 1980, the Senate Judiciary Subcommittee on Criminal Laws held a joint hearing on S. 105 with the Labor and Human Resources Subcommittee on Child and Human Development, which was followed in June by a hearing before the House Judiciary Subcommittee on Crime on related bills. The hearings were instructive in several respects. First, the concealment of children who have been wrongfully removed or retained by a parent has stunning effects on the left-behind parent, who is typically emotionally and financially drained by the unrelenting search for the missing child, as well as for the victim child, who suffers anger, fear and sometimes irreparable psychological trauma. Second, various agencies of state and federal government were unresponsive to the plight of the victim child and left behind parent, either through neglect of their lawful responsibilities or for want of legal authority to provide meaningful assistance in parental kidnapping and restraint cases. Third, the handful of jurisdictions that had not enacted the Uniform Child Custody Jurisdiction Act ("UCCJA") were serving, however unintentionally, as havens for child-abducting parents, and even some states that had adopted the UCCJA were loosely interpreting that law, the effect of which was to provide abductor-parents with the means to circumvent the jurisdictional requirements and anti-parental kidnapping spirit of that statute.

The consensus from the hearings was that a federal solution was needed for a problem that was essentially interstate in nature. Shortly after the hearings, I offered S. 105 as an amendment to the domestic violence legislation which was agreed to in the Senate on September 4, 1980. In its consideration of the parental kidnapping amendment, a House-Senate Conference Committee accepted the two chief civil sections of the proposal without amendment, and accepted a modified criminal provision. The conference version of S. 105 was ultimately passed by both houses on December 13, 1980 as part of H.R. 8406, a bill providing for Medicare reimbursement for pneumococcal vaccines.

As enacted, the Parental Kidnapping Prevention Act: (1) requires the appropriate authorities of every state to enforce and refrain from modifying custody and visitation rights ordered by courts which have exercised jurisdiction in compliance with the jurisdictional criteria set forth in the law; (2) authorizes the Federal Parent Locator Service to act on requests from States to locate children who have been abducted or retained and the parents who have abducted or retained them; and (3) expressly declares I would emphasize the intent of Congress that the Fugitive Felon Act applies to state felony parental kidnapping cases involving interstate or international flight. The Conference Report on H.R. 2977, the Domestic Violence Prevention and Services Act, contains a concise description of each of these provisions. The relevant pages of that report are attached as an appendix to my statement.

Before tackling the most serious implementation problem, that is, the Justice Department's unacceptable response to section 10 of the law, I would comment briefly on the implementation of the other parts of the law.

When the PKPA was enacted, only 15 states had adopted the UCCJA. One of the desired effects of the Full Faith and Credit provision, section 8 of Public Law 96-611, was to induce the remaining non-UCCJA states to adopt that uniform state law since universal enactment of the UCCJA is consistent with the policy objective of the PKPA. I am pleased to report that three states -- South Carolina, West Virginia and New Mexico -- adopted the UCCJA subsequent to the enactment of the PKPA, and UCCJA legislation is pending in the City Council of the District of Columbia and in Massachusetts. With respect to case law, there have been thus far very few state court decisions involving section 8 of the PKPA. While at some future date we may wish to reconsider that provision, it would be prudent to postpone any such consideration until a body of cases have been decided, and the legal and academic communities have had an opportunity to thoroughly scrutinize the affect of the law on child custody litigation.

The Parent Locator Service is not yet available to the States wishing to utilize it to locate abducting-parents and missing children. That the Department of Health and Human Services has reacted slowly to the mandate of section 9 of Public Law 96-611 is disturbing to me since the law required only minor adjustments in existing child support enforcement regulations. The delay is of far more immediate concern to the many parents throughout the country who had expected the service to be available soon after the law was passed. Instead, nearly 10 months has elapsed, and these parents are still without recourse to the FPLS to help find their missing children. I have written to Secretary Schweiker urging the Department to expedite the promulgation of the regulations and the federal-state agreement required by the law. The agreement must be submitted to the States for approval by the Governor or his or her delegate. It is imperative

"convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

On December 31, 1980, three days after the law was passed, the Criminal Division of the Justice Department issued "revised" guidelines which purported to implement the Fugitive Felon section of the PKPA. Unfortunately, the new guidelines were little more than a reformulation of the pre-PKPA policy; under the new policy, the Criminal Division required, quote, "independent credible information establishing that the child is in physical danger or is being seriously abused or seriously neglected."

On March 9, 1981, I initiated a letter joined in by nine other senators and congressmen to Attorney General Smith requesting that he undertake a review and revision of the fugitive felon directive in accordance with the new law. The belated reply accompanied the report required to be filed by the Justice Department 120 days after enactment of the law, both of which were submitted to Congress on June 26, 1981. Copies of the letter and report are included as an appendix to my statement.

The contents of the letter and report hardly justified the long delay, for the "revised revised" policy set forth in these documents represents a barely perceptible improvement over the immediately preceding policy formulation. Of primary concern is the fact that these current guidelines continue to require as a condition precedent of the issuance of Fugitive Felon warrants, quote, "independent credible information that the child is in physical danger or is

that this section of the PKPA be fully implemented as soon as possible. Every day of delay is potentially another date of separation between parents and their children.

Last, but certainly not least, I turn to the matter of the implementation of section 10 of Public Law 96-611. As mentioned earlier in this statement, the House-Senate Conference Committee substituted for the section of S. 105 that would have created a new federal misdemeanor offense for child snatching a provision expressly declaring congressional intent that the Fugitive Felon Act applies to parental kidnapping cases. This modification struck a balance between federal and state law enforcement responsibilities in state felony parental kidnapping cases involving flight. The object was to bring the F.B.I. into investigations of abduction and restraint cases which the state prosecutor was intent on prosecuting upon the extradition of the perpetrator. Although the Fugitive Felon Act, 18 U.S.C. 1073, applies on its face to all state felonies, the Justice Department had carved out an exception for parental kidnappings, apparently based on the statutory exemption of parents from the federal kidnapping Law, 18 U.S.C. 1201, from which they inferred that Congress similarly intended to limit the application of the Fugitive Felon Act in cases involving parents.

In enacting section 10 of the PKPA, Congress specifically rejected the Justice Department's restrictive standards for the issuance of fugitive complaints which essentially treated parental kidnapping cases differently than all other felony offenses. The pre-PKPA Justice Department guidelines required as conditions precedent to the issuance of Fugitive Felon warrants, and I quote,

then in a condition of abuse or neglect." Additionally, prior approval must be obtained from the Justice Department in Washington before a U.S. attorney can issue a fugitive complaint.

Mr. Chairman, the current policy frustrates the express intent of the new law. Congress intended that state felony cases would be treated in the same manner as all other state felony charges, and that no special criteria would be applied to restrict the application of the Fugitive Felon Act in state felony parental kidnapping cases in which the state prosecutor intends to extradite and prosecute the fugitive once he or she is apprehended by the F.B.I. Yet, the Justice Department's requirements remain unique to child snatching cases; no similar criteria attach to the issuance of Fugitive Felon warrants in any other state felony cases. Moreover, these requirements essentially change the character of the underlying offense for which the warrant is available from parental kidnapping, as the law specifically requires, to child abuse or neglect, a result which clearly contradicts the express language of the law. To add insult to injury, the requirements cannot possibly be satisfied by complainant-parents who do not know the whereabouts of their abducted children and therefore cannot provide the requisite quote, "credible information that the child is in physical danger or is then in a condition of abuse or neglect."

On account of the Justice Department policy, the federal-state cooperative relationship which the law was intended to forge has unfortunately not materialized. Instead, meaningful federal investigative assistance in state felony parental cases remains unavailable to prosecutors in all but a few cases. The June 26

report leaves no doubt but that very few warrants have been issued since the passage of the PKPA: of the 24 applications that met the "statutory requirements for assistance," a mere 6 UFAP warrants were issued. As an aside, I wonder whether the 24 applications met the Department's guidelines.

The application of the restrictive criteria is only one reason why the warrants are not being issued as intended by the law. The Department's requirement of prior Criminal Division approval of UFAP complaints has also proved to be a very substantial impediment to the issuance of fugitive warrants. Cases have been brought to my attention wherein the local United States Attorney has decided in favor of issuing a fugitive felon warrant in particular state felony cases, only to have that decision overturned by the Justice Department in Washington. In addition, the philosophy of the Justice Department that felony parental kidnapping cases are domestic, rather than criminal matters, has continued unabated despite the clear expression on the part of Congress to the contrary.

Mr. Chairman, for as long as the Justice Department maintains its present policy, one thing is certain. Very few cases of parental kidnapping will involve the F.B.I., and the F.B.I., Justice Department and Congress will be left with nothing more than sheer conjecture as to the actual number of cases which would fall to the federal government to investigate if the new law was applied without restriction. In the absence of such firm data, Congress has no basis to effectively evaluate its decision to involve the federal government in the investigation of parental kidnapping cases. Nor I might add, can the Justice

Department substantiate its claim that the investigation of parental cases require an undue amount of their time and effort. If we are to assess the effectiveness of the law as a response to the tide of parental kidnappings nationwide, it must be fully enforced to provide meaningful data for our evaluations. This would likewise prove instructive for the Department, itself.

Mr. Chairman, I offer the following recommendations to improve the effectiveness of section 10 of the new law. First, the Department should vigorously enforce the law so that data is available to Congress for an in-depth assessment of the efficacy of applying the Fugitive Felon Act to state felony parental kidnapping cases, which in turn will serve as a clear warning to parents that abductions or retentions of children will not be tolerated. Second, the guidelines which treat child snatching cases differently than all other state felony charges should be eliminated, as should be the requirement of prior approval from Washington. Third, the reports required to be filed pursuant to section 10(a) of the law should indicate who the applicant is, and the state in which the application is made. This will facilitate future oversight of the Justice Department's implementation efforts.

Mr. Chairman, I thank you again for your obvious commitment to the full and effective implementation of the Parental Kidnapping Prevention Act.

SMITH: WILLIAM FRENCH (HON.)
DATE FILE - October 8, 1981

October 8, 1981

The Honorable William French Smith
The Attorney General
Washington, D.C. 20530

Dear Mr. Attorney General:

At the hearing of the Subcommittee on Crime on the implementation of the Parental Kidnapping Prevention Act of 1980 (P.L. 96-611) on September 24, several questions were raised for which answers are to be supplied in writing. Those questions are:

1. What are the range of times, and the average time, of delay in responding to a State prosecutor's request for a UFAP warrant (that meets the Department's requirements of interstate flight, commitment to prosecute, and willingness to pay for extradition) in a parental kidnapping case, by requiring authorization for an investigation by the Criminal Division?

2. Please supply the guidelines for FBI field offices' responses to requests for assistance in parental kidnapping cases from persons other than State prosecutors.

3. Ms. Kristine Uhlman testified that immediately following the kidnapping of her children on Friday, September 11, 1981 at approximately 6:30 p.m., she called the FBI field office in Denver to request assistance and that the person answering the phone at the field office hung up on her immediately after she identified her call as one involving parental kidnapping. Please send me a report on that incident.

4. The Department's representative said that Criminal Division authorization is required for U.S. Attorneys to bring prosecutions under RICO, riot, obscenity and perjury (after acquittal). Those are significant classes of cases with significant political, public relations or law enforcement consequences. On what basis does the Department equate in significance that type of authorization to prosecute, with the authorization to

investigate in a parental kidnapping case?

5. The Department has stated that authorization for parental kidnapping cases must be routed through the Criminal Division because of the need for national uniformity in such cases. How many parental kidnapping cases are declined for FBI investigation by U.S. Attorneys that are not referred to the Criminal Division?

6. In how many cases have U.S. Attorney declinations been reversed, and an authorization for a UFAP warrant granted by the Criminal Division?

7. How is declination of investigation by U.S. Attorneys, with no Criminal Division approval, consistent with the goal of a uniform national policy?

8. According to the Report to the United States Congress on United States Attorney's Written Guidelines for the Declination of Alleged Violations of Federal Criminal Laws (November 1979), the policy of a U.S. Attorney in one district is to decline to prosecute cases involving less than a half kilogram of heroin, while U.S. Attorneys in nine districts decline cases of less than one ounce of heroin. Whatever the merits might be of such a declination policy in specific districts, it is hard to comprehend that national uniformity in major drug trafficking cases is less important than national uniformity in parental kidnapping cases. In what way is national uniformity in parental kidnapping cases more important to the Criminal Division than uniformity in drug trafficking cases?

9. What State felonies, besides parental kidnapping, require Criminal Division review for UFAP warrant authorization?

10. For what State felonies, besides parental kidnapping, does the Department of Justice have authorization requirements in addition to (1) interstate flight; (2) good faith intention to prosecute; and (3) a commitment to prosecute and pay for extradition?

11. Witnesses at our hearing testified concerning policy changes which might be made which would bring about more effective use of UFAP in child snatching cases without further legislative action, such as by making interstate child snatching a federal offense. The

recommendations heard most often were to permit child snatching UFAP determinations, like all other UFAP cases, to be made by the U.S. Attorney, and to eliminate the requirement that, in addition to the requirements of UFAP itself, there be a showing by "independent credible information" that the child is being abused or neglected. Could you give us your views on these suggestions? What modifications, if any, are we likely to see in Justice Department policies and procedures regarding UFAP requests in child snatching cases?

The Subcommittee is keeping the record of the hearing open in anticipation of your response.

Sincerely,

William J. Hughes
Chairman
Subcommittee on Crime

WJH:esh

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 18 1981

Honorable William J. Hughes
Chairman
Subcommittee on Crime
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of October 8, 1981 requesting written answers to certain questions raised at the Subcommittee's September 24, 1981 hearing on the implementation of the Parental Kidnaping Prevention Act of 1980 (Act).

Question: What are the range of times, and the average time, of delay in responding to a State prosecutor's request for a UFAP warrant (that meets the Department's requirements of interstate flight, commitment to prosecute, and willingness to pay for extradition) in a parental kidnaping case, by requiring authorization for an investigation by the Criminal Division?

Response: The length of time which the Criminal Division takes to respond to law enforcement requests for UFAP warrants in parental kidnaping cases varies with the circumstances in each case. For example, the FBI recently was informed of a parental kidnaping still in progress. Because the abducting parent was the subject of an existing FBI investigation, information was readily available which indicated that the case came within our policy guidelines, even before the state authorities had an opportunity to file criminal charges or request UFAP assistance. The Criminal Division telephonically authorized the filing of a UFAP warrant, conditioned upon the filing of a state felony charge, evidence of interstate flight, and a commitment to extradite.

When the facts of a particular case indicate that the abducted child is in imminent danger of physical harm or serious abuse, U.S. Attorneys' offices or the FBI usually initiate telephonic contact with the Criminal Division, and an expedited determination is made, sometimes within a matter of minutes.

On the other hand, many cases do not require an expedited response. Frequently, the local police have had an outstanding arrest warrant for the fugitive parent for a period of weeks or even months. Often, in these situations, the request for a UFAP warrant is in the form of a letter from the local prosecutor to the United States Attorney. In such situations, United States Attorneys frequently forward the local prosecutor's letter to the Criminal Division. Such a procedure necessarily involves the delay incident to the delivery and handling of the mail. When a written request is received in the General Litigation and Legal Advice Section of the Criminal Division, determinations, as a general rule, are made the same day. In some cases, however, the requests do not contain enough information to make an informed determination. In such cases, the FBI or the United States Attorney's office is advised and the request is held in abeyance until the additional information is forthcoming.

Question: Please supply the guidelines for FBI field offices' responses to requests for assistance in parental kidnaping cases from persons other than State prosecutors.

Response: We have been informed that FBI field offices handle requests for assistance in parental kidnaping cases from persons other than State prosecutors in the same manner as they do any other requests for assistance under the Fugitive Felon statute. The complainant is advised that a local felony warrant must be outstanding, evidence of interstate flight must exist and the local authorities must formally request FBI assistance under Title 18, USC, Section 1073 (UFAP). One exception to the above policy in parental kidnaping matters is that the details of the complaint are recorded and the complainant is advised that upon receipt of a request for assistance from local authorities the details will be forwarded to FBIHQ and the Department of Justice for approval prior to any investigation being conducted.

Question: Ms. Kristine Uhlman testified that immediately following the kidnaping of her children on Friday, September 11, 1981, at approximately 6:30 p.m., she called the FBI field office in Denver to request assistance and that the person answering the phone at the field office hung up on her immediately after she identified her call as one involving parental kidnaping. Please send me a report on that incident.

Response: The FBI has informed us that they have furnished the Subcommittee with a report of this incident.

Question: The Department's representative said that Criminal Division authorization is required for United States Attorneys to bring prosecutions under RICO, riot, obscenity and perjury (after acquittal). Those are significant classes of cases with significant political, public relations or law enforcement consequences. On what basis does the Department equate in significance that type of authorization to prosecute, with the authorization to investigate in a parental kidnaping case?

Response: The Department has expressed no view regarding the relative significance of parental kidnaping investigations as opposed to prosecutions under RICO, anti-riot, obscenity and perjury statutes. The Department, very simply, has asserted its right to exercise prosecutorial discretion in the enforcement of Federal criminal laws. For a variety of reasons, which we have articulated in our reports to the Congress, we have placed policy limitations on FBI involvement in parental kidnaping cases. We submit that in response to the expressed intent of Congress, we have dramatically increased FBI involvement in parental kidnapings. We further submit that our policy limitations on FBI involvement are the result of the prudent exercise of prosecutorial discretion.

Question: The Department has stated that authorization for parental kidnaping cases must be routed through the Criminal Division because of the need for national uniformity in such cases. How many parental kidnaping cases are declined for FBI investigation by United States Attorneys that are not referred to the Criminal Division?

Response: The data furnished by the FBI for the period from December 28, 1980 through September 30, 1981, reflects that a total of 54 law enforcement requests for UFAP assistance in parental kidnapings were declined either by United States Attorneys or the Criminal Division. The data, however, does not differentiate as to the authority for the declinations.

Based solely on our experience and observations since passage of the Act, we believe that a substantial majority of the declinations were made in the Criminal Division. Our experience further indicates that United States Attorney's offices decline requests in which there are no allegations of physical harm, abuse, or neglect to the child. However, in situations in which there is at least some allegation or information touching on the question of abuse or neglect, United States Attorneys generally consult with or refer the request to the Criminal Division for a determination.

Question: In how many cases have United States Attorney declinations been reversed, and an authorization for a UFAP warrant granted by the Criminal Division?

Response: The data furnished by the FBI for the period from December 28, 1980 through September 30, 1981 reflects that a total of 31 law enforcement requests for UFAP warrants were authorized by the Criminal Division. The data does not reflect whether or not any of the cases authorized previously was declined by a United States Attorney's office.

Question: How is declination of investigation by United States Attorneys, with no Criminal Division approval, consistent with the goal of a uniform national policy?

Response: As a practical matter, since passage of the Act, United States Attorneys' offices consult with the Criminal Division on a daily basis as to the application of our policy guidelines in particular cases. In our written communications and in our daily telephonic consultations with United States Attorneys' offices, the Criminal Division has made it abundantly clear that our policy limitations on seeking UFAP warrants in parental abduction cases have been made less restrictive so as to include situations in which the child is in a condition of abuse or neglect. Accordingly, we believe we are achieving substantial uniformity in the application of our prosecutive policy in this area.

Question: According to the Report to the United States Congress on United States Attorney's Written Guidelines for the Declination of Alleged Violations of Federal Criminal Laws (November 1979), the policy of a United States Attorney in one district is to decline to prosecute cases involving less than a half kilogram of heroin, while United States Attorneys in nine districts decline cases of less than one ounce of heroin. Whatever the merits might be of such a declination policy in specific districts, it is hard to comprehend that national uniformity in major drug trafficking cases is less important than national uniformity in parental kidnaping cases. In what way is national uniformity in parental kidnaping cases more important to the Criminal Division than uniformity in drug trafficking cases?

Response: The Department has expressed no view regarding the relative importance of national uniformity in the prosecution of drug trafficking cases as opposed to parental kidnaping cases. It is not relative importance but different considerations that dictate the disparity of treatment. United States Attorneys have discretion to allocate the limited resources of their offices to meet the Federal law enforcement problems peculiar to their districts. Assistance to the states under the Fugitive Felon Act requires a uniform national policy to assure equality of treatment and a proper allocation of FBI resources.

Question: For what State felonies, besides parental kidnaping, does the Department of Justice have authorization requirements in addition to (1) interstate flight; (2) good faith intention to prosecute; and (3) a commitment to prosecute and pay for extradition?

Response: None. For reasons set forth in our reports to the Congress and in testimony at the Subcommittee's hearing on September 24, 1981, we believe there is a valid basis for distinguishing between an ordinary felon fleeing from State justice and a parent charged with a felony child custody offense. Accordingly, as a matter of prosecutorial discretion, we have chosen to limit Federal involvement in parental kidnaping cases.

Question: What State felonies, besides parental kidnaping, require Criminal Division review for UFAP warrant authorization?

Response: None. In an effort to achieve a substantially uniform application of our prosecutive policy, we require Criminal Division authorization to seek a UFAP warrant in parental kidnaping cases.

Question: Witnesses at our hearing testified concerning policy changes which might be made which would bring about more effective use of UFAP in child snatching cases without further legislative action, such as by making interstate child snatching a federal offense. The recommendations heard most often were to permit child snatching UFAP determinations, like all other UFAP cases, to be made by the United States Attorney, and to eliminate the requirement that, in addition to the requirements of UFAP itself, there be a showing by "independent credible information" that the child is being abused or neglected. Could you give us your views on these suggestions? What modifications, if any, are we likely to see in Justice Department policies and procedures regarding UFAP requests in child snatching cases?

Response: It was suggested at the Subcommittee's hearing on September 24, 1981 that to comply with the intent of Congress, as expressed in the Act, the Department must apply the UFAP statute to parental kidnapings without restriction and in the same manner as to all other state felony offenses. We believe, however, that to effectively manage Federal law enforcement resources the Department must retain prosecutorial discretion in enforcement of criminal laws. Nevertheless, we believe that our application of the Fugitive Felon Act to parental kidnaping cases is in substantial conformity with our utilization of the statute in other areas. FBI involvement under the Fugitive Felon Act has long been limited to those serious cases in which the states have demonstrated sufficient interest in obtaining the return of the fugitive to warrant their pursuing extradition. This policy is carried forward in the parental kidnaping area by limiting Federal involvement to the most egregious cases, that is, those involving physical danger to or abuse or neglect of the child. If, as presently available information suggests, state and local prosecutors generally are unwilling to prosecute even these cases, there is certainly no basis for concluding that extradition will be pursued in less aggravated cases.

In response to the will of Congress, we have dramatically increased FBI involvement in parental kidnapings. As a result of our policy, authorized parental kidnaping cases are included in the highest priority of the FBI's Fugitive Program, and such cases are afforded continuous preferred treatment. In our view, the routine involvement of the FBI in parental kidnapings has a serious potential for abuse in that it encourages the use of Federal criminal process to enforce civil obligations. Furthermore, routine FBI involvement necessarily will divert FBI resources away from parental kidnapings involving abuse or neglect of the child as well as from other top priority fugitive investigations.

Accordingly, we believe that our parental kidnaping policy is the result of a prudent exercise of prosecutorial discretion, which effectively applies the Fugitive Felon Act to those parental kidnapings in which it is reasonable to believe that a serious law enforcement interest may exist.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

U.S. Department of Justice

Federal Bureau of Investigation

OCT 19 1981

Washington, D.C. 20535

October 14, 1981

Honorable William J. Hughes
Chairman
Subcommittee on Crime
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

On September 24, 1981, representatives of the Department of Justice and the FBI testified before your Subcommittee regarding the Parental Kidnaping Prevention Act. On that same date, Mrs. Kristine Ann Uhlman of Colorado also testified before your Subcommittee.

During her testimony, Mrs. Uhlman indicated that on September 11, 1981, she called the Denver Office of the FBI three times after her estranged husband had allegedly abducted her two small children. Mrs. Uhlman stated that during two of her calls, she was hung up on and that her third call went unanswered. In view of her testimony, an inquiry was conducted by the FBI which disclosed that two telephone calls were received from Mrs. Uhlman by an employee of our Denver Office. Mrs. Uhlman's first call was received at approximately 6:30 p.m., and she spoke in a highly agitated manner making it difficult to determine the purpose of her call. After several minutes, however, it was determined that her husband had abducted her children from her front yard and that the police had been notified.

An attempt was made to explain to Mrs. Uhlman in a very basic manner the FBI's responsibilities in parental kidnaping matters. Because of a number of unanswered, incoming calls, Mrs. Uhlman's call was placed on "hold" for approximately one minute; however, she was not on the line when the call was reanswered. Within a minute a second call was received from Mrs. Uhlman, who continued to speak in an agitated manner. Once again, an attempt was made to explain FBI procedures in such matters, but with no apparent indication of understanding on Mrs. Uhlman's part. Since unanswered,

incoming telephone calls were increasing, Mrs. Uhlman was advised that her call was being disconnected and this was done.

Approximately five minutes later a call was received from Mrs. Uhlman's neighbor who wanted to know why the FBI would not assist Mrs. Uhlman. The FBI's procedures in parental kidnaping matters were explained to this individual as well. During this conversation, our employee inquired if the local police were on the scene, and the neighbor summoned a police officer to the phone. That officer related the facts concerning the abduction and was advised that the FBI would recontact the police. After a Supervisory Special Agent was consulted, the police officer was recontacted at the scene and FBI procedures in parental kidnaping matters were reiterated.

On September 12, 1981, the United States Attorney's Office, Denver, Colorado, was consulted regarding this matter and the Department of Justice, Washington, D. C., advised FBI Headquarters on September 24, 1981, that no authorization was being given for issuance of an Unlawful Flight to Avoid Prosecution warrant against Mrs. Uhlman's husband.

For your additional information, an attorney representing Mrs. Uhlman's estranged husband, a Saudi Arabian national, has advised the United States Attorney's Office in Denver that Mrs. Uhlman's husband and children are in Saudi Arabia and that he does not intend to return to the United States.

I can understand Mrs. Uhlman's grave concern when she called our Denver Office and regret that she did not understand our inability to be of assistance to her.

Sincerely yours,

Charles P. Monroe

Charles P. Monroe
Assistant Director
Criminal Investigative Division

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

JUN 26 1981

Honorable Malcolm Wallop
United States Senate
Washington, D. C. 20510

Dear Senator Wallop:

This is in further response to your letter of March 9, 1981, signed by nine other Senators and Members of Congress, objecting to the Department's policy guidelines limiting FBI involvement under the Fugitive Felon Act in "child snatching" cases, and requesting that these guidelines be revised to conform with the expression of Congressional intent set forth in section 10 of the Parental Kidnaping Prevention Act of 1980, (the Act) (Public Law 96-611).

Because of the concern expressed by you and your colleagues, the Attorney General requested a review of our policy guidelines be undertaken. Based on this review, the Department of Justice is convinced there is a demonstrated need for policy limitations on Federal involvement in "child snatching" cases under the Fugitive Felon Act. However, as a result of that review, the policy limitations have been modified as indicated below.

The Department's experience in these matters indicates that a "child snatcher" is a different kind of offender than the ordinary felon fleeing from state justice. We note that a significant number of states classify parental abduction or custodial interference as a misdemeanor not a felony. Moreover, it appears that state prosecutors often charge an abducting parent with a criminal violation as an accommodation to the victim parent, with no real intention of ultimately prosecuting the criminal charge against the abducting parent. Over the past several years, we have authorized FBI involvement in a significant number of these cases, consistent with existing policy guidelines. We have found that in repeated instances the state felony charges against the abducting parent have been dropped shortly after the complaining parent regained custody of the child. We suggest that the use of

the Fugitive Felon Act in situations where state authorities have no actual intention of prosecuting the underlying criminal charges would amount to an abuse of legal process.

In the past four months, a variety of "child snatching" cases have been brought to our attention which, in our view, confirm the need for policy limitations. In two cases, the abducting parents were, in effect, given temporary custody in the asylum state despite outstanding felony "child snatching" warrants in other states. In two other cases, the parents were charged with felonies in spite of the fact they had custody decrees in other states. In at least three cases, the locations of the abducting parent were known, but law enforcement authorities in the asylum states refused to honor the out-of-state warrants, possibly because the asylum states classified child snatching as a misdemeanor. In two other cases, the asylum states refused extradition. In these latter cases, the request for FBI assistance apparently was an effort to avoid the extradition process. The Fugitive Felon Act, of course, is not an alternative to extradition, and individuals arrested on a Federal fugitive warrant should not be removed from the asylum state under Rule 40, Federal Rules of Criminal Procedure, when no Federal prosecution is intended. See United States v. Love, 425 F. Supp. 1248 (S.D.N.Y. 1977).

I wish to emphasize that the Department's policy is not intended to frustrate the spirit of section 10 of the Act. To the contrary, our policy is now less restrictive than in the past. Prior to the Act we required "convincing evidence that a child is in danger of serious bodily harm" before involving the FBI in a "child snatching" case. Under new guidelines established after enactment of the Act, we became involved in these matters if there was independent credible information that the child was being "seriously neglected or seriously abused".

As a result of that policy change, we authorized FBI involvement in six "child snatching" cases as of March 31, 1981, the cut-off date used for compiling data for the first report required by section 10(b) of the Act. Since March 31, 1981, we have authorized FBI involvement in at least seven additional cases. Recently, as a result of our policy review, the guidelines have been modified to permit FBI involvement under the Fugitive Felon Act in those instances where there is independent credible information establishing that the child is in physical danger or is then in a condition of abuse or neglect. We believe that this policy modification will result in a significant increase in Federal involvement, when compared with previous years.

Our present policy guidelines are an effort to comply with Congressional intent by extending Federal involvement to cases involving abuse and neglect. Consistent with our other criminal law enforcement responsibilities, we expect to furnish an increased level of assistance to the states in the legitimate enforcement of their criminal laws. At the same time, we hope to avoid the utilization of FBI investigative resources to enforce civil obligations.

I hope the foregoing information clarifies our position on this matter.

Sincerely,

Edward C. Schmults
Deputy Attorney General

Ltr dtd

Office of the Attorney General
Washington, D. C. 20530

DEC 1 1981

November 25, 1981

The Vice President
United States Senate
Washington, D. C. 20510

Dear Mr. Vice President:

In accordance with Section 10(b) of the Parental Kidnaping Prevention Act of 1980, attached is our second report to the Congress with respect to steps taken by the Department of Justice to comply with the intent of Congress that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes.

Sincerely,

William French Smith
Attorney General

Attachment

Identical submission sent to Speaker

REPORT ON IMPLEMENTATION OF
PARENTAL KIDNAPING PREVENTION ACT OF 1980

Pursuant to Section 10 of the Parental Kidnaping Prevention Act of 1980 (Act), the Department of Justice submits its second report to the Congress setting forth the steps taken by the Department to comply with the intent of Congress that the Fugitive Felon Act, 18 U.S.C. 1073, apply to cases involving parental kidnapings and interstate or international flight to avoid prosecution under applicable state felony statutes.

Since passage of the Act, the Department's longstanding policy limiting FBI involvement in parental kidnapings has been reviewed, modified, and made less restrictive. We now authorize the filing of a complaint, under the Fugitive Felon Act, where the basic criteria of the Act are met and there is independent credible information that the child is in physical danger or is then in a condition of abuse or neglect. By expanding Federal involvement to cases involving abuse or neglect, we are furnishing a substantially increased level of assistance to the states in parental kidnaping cases.

Our careful review of this area has also served to reaffirm our conclusion that the sound exercise of prosecutorial discretion, the need for careful utilization of Department resources, and the intent behind the Fugitive Felon Act mandate that we restrict Federal involvement to those parental kidnapings where serious criminal law enforcement interests appear to exist. Accordingly, while we have significantly expanded Federal involvement related to parental cases, it remains our intention to avoid the utilization of FBI investigative resources and the use of Federal criminal process as a pretext for enforcing civil obligations.

As stated in our initial report to Congress, the FBI is compiling data on all parental abduction complaints, rather than limiting the data to requests received from state law enforcement agencies for assistance under the Fugitive Felon Act. The FBI has informed us that for the period from December 28, 1980 through September 30, 1981, a total of 576 parental kidnaping complaint forms were received from 58 field divisions covering 49 states and territories. One hundred and twenty-one of these complaints concerned parental abductions occurring prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the Act. Of the 576 complaints received, 479 either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe that the abducting parent fled

interstate to avoid prosecution for a felony. Typically in these cases, there was no violation of a custody decree, or no felony charge had been filed, or there was no evidence of interstate flight. Therefore, of the 576 parental abduction complaints received, 97 were actual requests from state law enforcement agencies for FBI assistance under the Fugitive Felon Act. FBI involvement was authorized in 31 cases and declined in 54 cases. The disposition of the remaining 12 requests had not yet been reported to the FBI Headquarters as of September 30, 1981. Of the 31 cases in which FBI involvement was authorized, the FBI arrested 5 individuals and local authorities arrested 8 others. A total of 15 children were located.

Although no formal data compilation was made, the FBI has informed us that in the 7 years prior to the Act, FBI involvement was authorized in 49 cases, an average of seven cases per year. Therefore, the authorization of FBI involvement in 31 parental abductions in a nine month period is a very significant increase. In our view, the Department is making a good faith effort to apply the Fugitive Felon Act to "child snatching" felonies, consistent with the sound exercise of prosecutorial discretion.

For at least the past twenty years, Congress has recognized that the Fugitive Felon Act is a vehicle in aid of the extradition process, and that FBI involvement is to be limited to those serious cases in which the state has demonstrated sufficient interest in obtaining return of the fugitive to warrant incurring the necessary expenses incident to extradition. H.R. Rep. No. 827, 87th Cong. 1st Sess. (1961). We assume it continues to be the intent of Congress that the Fugitive Felon Act be used to assist the states in serious criminal cases. We also assume that Congress does not now intend that the Department engage in abuse of legal process by using the Fugitive Felon Act as a pretext for forcing compliance with child custody decrees.

In our first report, we expressed concern that some state prosecutors may charge the abducting parent with a criminal offense to enforce compliance with the civil custody decree, with no intention of prosecuting the criminal charge. We also expressed the view that use of the Fugitive Felon Act, where there is no intention of prosecuting the underlying felony charge, would be an abuse of legal process. Of the 13 parents arrested on Fugitive Felon warrants between passage of the Act, and September 30, 1981, we are aware of only one criminal prosecution, and one extradition request. More recently, a local prosecutor declined to seek extradition of an abducting parent arrested by Customs officers on a Fugitive Felon Act warrant, the issuance of which he had requested. While it may be premature to draw any conclusions at this point, we expect to have data available in the future as to the number of parental abduction cases in which the requesting state follows through with a criminal prosecution.

It continues to be our policy that authorization to seek a Fugitive Felon warrant in parental abduction cases be approved in the Criminal Division. By requiring Criminal Division approval, we hope to achieve a uniform nationwide prosecutive policy in this sensitive and controversial area. Requests for authorization, as a general rule, are reviewed by at least three attorneys in the General Litigation and Legal Advice Section of the Criminal Division and the determination generally is made by the Chief of that Section. In most cases, the determination is made on the same day the request is received in the Criminal Division.

In implementing our guidelines, we have not formulated an inflexible definition of the words "condition of abuse or neglect." An inflexible definition might lead to the arbitrary denial of relief through the mechanical application of the standard. Instead, we have, in our communications to the United States Attorneys, given concrete illustrations of the factors to be considered.

In most cases the complaining parent or local law enforcement officials contact the local office of the FBI or the United States Attorney, where the case receives an initial screening. Those cases in which there is no probable cause basis for the filing of an unlawful flight complaint, or in which there has been no law enforcement request for assistance, and those cases which clearly do not meet the guidelines, may be declined by the U.S. Attorney's Office. The declination is, of course, without prejudice to renewal upon the development of further evidence. Cases that appear to satisfy the requisites for a Fugitive Felon complaint and to meet the guidelines are forwarded to the Department for authorization. The review in the Criminal Division often reveals that the requirements of the Fugitive Felon Act and the commitment to extradition are lacking and that there is no basis for filing a Fugitive Felon complaint, wholly apart from the guidelines.

Our guidelines require independent credible information of abuse or neglect that is of a continuing nature, as opposed to an isolated episode devoid of lasting consequences in which the abducting parent may have deviated from generally accepted standards of parental care.

By way of illustration, the following are a few of the circumstances that were determined to warrant FBI involvement:

1. parent previously arrested for child abuse offense

2. school principal stated that children had been beaten by the abducting parent

3. parent previously involved son in child pornography

4. parent had several drunk driving convictions and was travelling great distances by automobile with an infant child

5. parent known to state law enforcement authorities as a serious drug abuser

6. parent lost custody of child after court determination that parent was unable to provide adequate supervision and care

7. parent, a known drug dealer and associate of a motorcycle gang, previously abducted child and left child unattended for long periods of time

8. parent and child believed to be residing with psychotic, drug addicted, violence prone relative

9. welfare department report indicated that, while in the custody of the abducting parent, the child was poorly clothed, was not being bathed, had hair infested with lice, and possibly was malnourished

10. court took custody away from parent based on an allegation of neglect; school principal stated children were malnourished; police officer stated abducting mother's boyfriend was an emotionally unstable sex offender

11. abducting parent, a member of a motorcycle gang, had a long history of violent conduct, including serious beating and abuse of his children

12. abducting parent had a history of emotional instability, and the child was epileptic and required daily medical attention

13. abducting parent threatened suicide and stated he would take the child to heaven with him

14. abducting parent suffered from severe emotional illness which could produce a catatonic state and, therefore, an inability to care for the child

15. abducting parent acquiesced in sexual abuse of the child

16. child had bruises and burns after weekend visits with abducting parent

By way of contrast, we have declined to authorize FBI involvement based only on information that the abducting parent had an unconventional life style, such as a communal living arrangement with a religious cult or employment as an itinerant musician. Similarly, we have not authorized FBI involvement in several cases in which the claim of abuse or neglect was based solely on the fact that no request was made to forward school records, from which it might be inferred that the children are not attending school. However, such information has been considered along with other information concerning abuse or neglect where FBI involvement was authorized.

Of the 54 parental abduction cases in which we declined law enforcement requests for FBI assistance, a significant number were declined, not on the basis of our policy guidelines, but because the location of the fugitive was known to the state authorities seeking the return of the fugitive. For example, a request for FBI assistance was received from a North Carolina prosecutor, who urged that FBI involvement was imperative because this was the second abduction episode. The abducting parent was residing with the child at a known location in Maryland. It was determined that local law enforcement authorities in Maryland had refused to honor the North Carolina felony warrant on the basis that the abducting parent was being "harassed" by North Carolina authorities. FBI involvement in this situation was declined because the Fugitive Felon Act is not an alternative to interstate extradition. In such circumstances, FBI involvement would have been declined regardless of the underlying felony charge.

Clearly, the Fugitive Felon Act is designed to work in tandem with the interstate extradition process. It has been held that an individual arrested on a Fugitive Felon warrant may not be removed from the asylum state under Rule 40, Federal Rules of Criminal Procedure, where no Federal prosecution is intended, because removal would circumvent valid state extradition laws. United States v. Love, 425 F. Supp. 1248 (E.D.N.Y 1977).

Recently, we received a request for FBI involvement in which there was evidence bringing the case within our policy guidelines. However, the state prosecutor advised he could not promise to extradite the subject because decisions to extradite must be approved by a committee in the State Attorney General's office. Apparently, under the state's policy, extradition generally is not authorized in parental abduction cases. We advised that, as with any other felony offense, FBI involvement would not be authorized without a commitment to extradite.

In another case, a Virginia prosecutor requested FBI involvement, urging that the child was subject to abuse or neglect because the abducting mother was a marijuana user and had been treated for depression. The mother and the child were known to be residing with the mother's boyfriend, who operated a business in Hawaii. FBI assistance was declined in this situation because the Fugitive Felon Act is not an alternative to extradition.

Several other law enforcement requests were declined because the abducting parents were known to be residing in foreign countries, and no extradition treaty makes unlawful flight to avoid prosecution an extraditable offense. In addition, it is our understanding that the views of almost all our treaty partners is that child custody questions are essentially domestic law matters which should be handled through civil remedies not through criminal sanctions. As you know, the proposed 1980 Hague Convention on the Civil Aspects of International Child Abduction treats the problem of parental kidnaping as a civil, not a criminal matter.

It has been suggested that in international parental abduction cases, a Fugitive Felon warrant should be sought for the purpose of compelling the abducting parent to negotiate the return of the child. In our view, the use of Federal criminal process as a "bargaining chip" in negotiating the settlement of a child custody dispute would be an abuse of legal process.

Even cases which, on the surface, appear to come within our guidelines, nevertheless, require very close scrutiny. The following three situations illustrate some of the problems we have encountered:

1. The abducting father was charged with a Massachusetts felony offense which specifically alleged that the abduction occurred under circumstances that endangered the child's safety. The Massachusetts prosecutor requested FBI assistance, promising to extradite the fugitive if arrested.

Further inquiry ascertained that the abducting father originally obtained custody of the child in Alabama, with visitation rights to the mother. Subsequently, when exercising those rights, the mother took the child to California. While in California, she obtained a decree giving her custody, with visitation rights to the father. When the father's turn for visitation came, he took the child to Massachusetts where he had obtained a new job. The mother brought a custody suit in Massachusetts. Rather than litigate the matter, the father returned to Alabama where he originally obtained custody. The

address of the abducting father was known to both the Massachusetts prosecutor and the mother. In fact, it appears that the mother actually visited the child in Alabama.

We declined FBI assistance in this case. If the Massachusetts authorities are determined to proceed with the criminal prosecution, they may initiate extradition proceedings and request Alabama authorities to arrest the abducting father and hold him in custody until resolution of the extradition proceeding.

2. The State of Illinois charged a mother with felony child stealing and requested FBI assistance under the Fugitive Felon Act. Numerous allegations were made indicating that the children were being seriously abused by the mother and her boyfriend.

Further inquiry ascertained that the abducting mother took the children to Mississippi. Illinois authorities attempted to have the child stealing warrant executed in Mississippi, but law enforcement authorities there refused. The father went to Mississippi and initiated a custody proceeding. At the initial hearing, the judge apparently refused to honor the Illinois arrest warrant, and permitted the mother to retain custody until the next hearing date, in effect, granting temporary custody to the mother. The judge also ordered an investigation of the mother's fitness by a local welfare agency.

Between the first hearing and the date for the second hearing, the mother became involved in an altercation with a relative of the father, which resulted in the mother being charged with assault by Mississippi authorities. The mother, the boyfriend and the children then left Mississippi for Florida, and apparently there were no further custody proceedings in Mississippi. Nevertheless, the report of the welfare investigation was favorable to the mother.

Subsequently, the mother and the children were located in Alabama. A copy of the Illinois arrest warrant was sent to Alabama but officials there refused to arrest the mother. The allegations of abuse were reported to welfare authorities in Alabama. Apparently some investigation was conducted, and it was concluded the children appeared to be in reasonably good health.

The father then went to the mother's residence in Alabama in a self-help effort to regain custody of the children. He succeeded in taking one of the children. The mother's boyfriend, however, attempted to stop the father from departing. An altercation ensued in which gunshots were fired. The father departed for Illinois with one of the children. Subsequently,

the father was charged with assault with a dangerous weapon by the State of Alabama. Consequently, the father is not at liberty to return to Alabama.

FBI involvement in this case was declined because the whereabouts of the fugitive mother is known. Very simply, this is an extradition matter between Illinois and Alabama. There is no need for an FBI fugitive hunt.

3. The State of Utah charged a mother with a felony child custody offense and requested FBI assistance. Information was received that at the Utah custody proceeding there was evidence the mother used corporal punishment to discipline the children.

Further inquiry ascertained that the mother was separated from her husband and took the children to New Mexico where she established residence. The father went to New Mexico, found the children and returned to Utah, where he obtained a custody decree. Pursuant to visitation privileges granted in the Utah decree, the children visited the mother in New Mexico, where she obtained a New Mexico custody decree. Utah authorities issued a felony warrant for the mother's arrest, and we understand New Mexico refused extradition. FBI assistance was sought at this point. We declined FBI assistance in this situation. Again, the Fugitive Felon Act is not a device to circumvent extradition laws.

From a practical law enforcement perspective, we believe we cannot routinely involve the FBI in "child-snatching" situations based on the same criteria that would be applied to other state felonies such as murder or armed robbery. A "child-snatcher," very simply, is different from the ordinary felon fleeing from state justice, as evidenced by the fact that at least ten jurisdictions either do not criminalize child-snatching or treat it as a misdemeanor.

Moreover, abducting parents, unlike fleeing murderers and robbers, generally do not present a continuing threat of violence to society. In this regard, routine involvement in parental kidnapings necessarily would divert the FBI's limited resources away from fugitive cases involving violent criminals as well as from organized crime, white collar crime, public corruption and violent offense investigations.

It has been suggested that, to comply with the intent of Congress, the Department must apply the Fugitive Felon Act to parental kidnaping cases in the same way that the Act is applied to other state felony cases. We believe, however, that to effectively manage Federal law enforcement resources the Department must retain prosecutorial discretion in the

enforcement of criminal laws. Nevertheless, we believe that our application of the Fugitive Felon Act to parental kidnaping cases is in substantial conformity with our utilization of the statute in other areas. As discussed above, FBI involvement under the Fugitive Felon Act has long been limited to those serious cases in which states have demonstrated sufficient interest in obtaining the return of the fugitive to warrant their pursuing extradition. This policy is carried forward in the parental kidnaping area by limiting Federal involvement to the most egregious cases, that is those involving physical danger to or abuse or neglect of the child. If, as presently available information suggests, state and local prosecutors are generally unwilling to prosecute even these cases, there is certainly no basis for concluding that extradition will be pursued in less aggravated cases.

It is our conclusion that, in response to the will of Congress, we have dramatically increased FBI involvement in parental kidnapings. It also is our conclusion that our policy limitation on FBI involvement is the result of a prudent exercise of prosecutorial discretion, which effectively applies the Fugitive Felon Act to those parental kidnapings in which it is reasonable to believe that a serious criminal law enforcement interest may exist.

Office of the Attorney General
Washington, D. C. 20530

July 12, 1982

04395

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Attached is the Department's third report to the Congress as required by Section 10(b) of the Parental Kidnaping Prevention Act of 1980. The report details the steps which the Department has taken to comply with the intent of Congress that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes.

Sincerely,

William French Smith
Attorney General

Attachment

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THIRD REPORT TO CONGRESS
ON IMPLEMENTATION OF THE
PARENTAL KIDNAPING PREVENTION ACT OF 1980

Pursuant to Section 10 of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611) (hereafter the Act), the Department of Justice submits this third report to the Congress setting forth the steps taken by the Department to comply with the intent of Congress that the Fugitive Felon Act, 18 U.S.C. 1073, apply to cases involving parental kidnapings and resulting interstate or international flight to avoid prosecution under applicable state felony statutes.

The FBI continues to compile data on all parental abduction complaints, rather than limiting its data only to those cases in which requests have been received from state law enforcement agencies for FBI assistance, under the Fugitive Felon Act, in locating fugitives fleeing from parental abduction felony prosecutions. Each FBI field division has been instructed to complete a parental kidnaping form (FD-595) pertaining to each parental abduction complaint received in the division. Although there always will be a certain amount of delay incident to collecting and reporting the data, we believe that we have established a data collection procedure that provides a reasonably reliable indication of the frequency of parental abduction episodes occurring throughout the country. We anticipate that, from time to time, our procedures will be reviewed and modified so as to enhance the accuracy of the collected data.

The FBI has informed us that from the date of passage of the Act, December 28, 1980, through December 31, 1981, a total of 805 parental kidnaping complaint forms were received from 58 FBI field divisions covering 52 states and territories. One hundred and fifty-two of these complaints concerned parental abductions occurring prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the Act. Of the 805 complaints received as of December 31, 1981, it was determined that 664 either did not come from state law enforcement agencies, or involved situations in which there was no probable cause to believe that the abducting parent had violated the Fugitive Felon Act. Typically, in these cases, there was no violation of a child custody decree, or no state felony charge had been filed, or there was no evidence that the offending parent had fled from the state. The remaining 141 complaints were carefully evaluated pursuant to the Department's policy guidelines, as set forth in our previous reports. FBI involvement was authorized in 40 cases and was declined in 75 cases. The disposition of the remaining 26 cases had not been reported to FBI Headquarters as of December 31, 1981.

Prior to the passage of the Act, no formal data compilation existed. However, the FBI has informed us that in the seven years prior to the Act, FBI involvement was authorized in 49 cases, an average of seven cases per year. Therefore, the authorization of FBI involvement in 40 cases, in the one-year period since passage of the Act, represents a significant increase in Federal involvement in parental kidnapings.

During the first three months of 1982, 65 new parental kidnaping complaint forms were received from 31 FBI field divisions covering 24 states and territories. Therefore, including the 26 complaints for which no disposition had been reported by the end of 1981, a total of 91 parental kidnaping complaints were under consideration during the first three months of 1982. It was determined that 63 of these complaints either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe that the abducting parent had violated the Fugitive Felon Act. In the remaining 28 cases, FBI involvement was authorized in seven cases and was declined in one case. The disposition of the other 20 cases had not been reported to FBI Headquarters as of March 31, 1982.

From passage of the Act through March 31, 1982, state law enforcement requests for FBI assistance in felony parental kidnaping cases were granted in a total of 47 cases, and were declined in a total of 76 cases. Thus, the available data indicates that we have authorized FBI involvement in approximately 38 percent of the cases in which state law enforcement agencies have requested FBI assistance and there is probable cause to believe that the subject has engaged in interstate flight from a state parental abduction felony prosecution. During the same period, 26 of these parents were arrested on Fugitive Felon warrants. Eleven of these arrests were accomplished by the FBI, 14 by local authorities, and one parent was arrested by another Federal law enforcement agency.

In our two previous reports, we noted that Congress has long recognized that the Fugitive Felon Act is a vehicle in aid of interstate extradition, and that FBI involvement is to be limited to those cases in which the state has demonstrated sufficient interest in obtaining the return of the fugitive to warrant incurring the necessary expenses incident to extradition. H.R. Rep. No. 827, 87th Cong. 1st Sess. (1961). Accordingly, when the FBI arrests any individual on a Fugitive Felon warrant, regardless of the underlying felony offense, they simply place the fugitive in the custody of law enforcement authorities in the asylum state, to await extradition or waiver of extradition, and the Fugitive Felon

complaint is dismissed. We, therefore, require that any state law enforcement agencies requesting FBI assistance, under the Fugitive Felon Act, give assurances that they are determined to take all necessary steps to secure the return of the fugitive, and that it is their intention to bring him to trial on the state charges for which he is sought.

Our previous reports also expressed concern that some state prosecutors may charge an offending parent with a criminal violation to enforce compliance with a civil child custody decree, and that use of the Fugitive Felon Act, where there is no intention of prosecuting the underlying felony charge, would be an abuse of legal process. Of the 26 parents arrested on Fugitive Felon warrants between passage of the Act and March 31, 1982, we are aware of only eight cases in which extradition was pursued. Thus, the available data suggests that even in parental abduction cases involving physical danger, abuse, or neglect to the child, state criminal prosecutions have been pursued in fewer than a third of the cases. Since our last report, state prosecutors in several states have declined to seek extradition of accused parents, arrested on Fugitive Felon warrants, the issuance of which they had requested. We are concerned that this situation, where there has been a request for the issuance of Federal criminal process and then a declination to extradite, has a potential for exposing the arresting FBI agents to civil liability.

We believe it is imperative that the Department retain prosecutorial discretion in the enforcement of criminal laws. Indeed, in considering the Parental Kidnaping Prevention Act of 1980, the Congress acknowledged that "the Department of Justice should be permitted to reasonably exercise some prosecutive discretion under the Fugitive Felon Act as under any other Federal criminal law." H.R. Conf. Report No. 96-1401 at p. 42. It is the Department's position that the sound exercise of prosecutorial discretion, the need for careful utilization of Department resources, and the intent behind the Fugitive Felon Act mandate that we restrict Federal involvement to those parental kidnapings where serious criminal law enforcement interests appear to exist. Although we have significantly increased Federal involvement related to parental kidnaping cases since passage of the Act, it remains our intention to avoid any open-ended utilization of FBI investigative resources and the indiscriminate use of Federal criminal process for enforcing what, in many instances, are nothing more than civil obligations. Accordingly, it continues to be our policy to authorize the filing of Fugitive Felon complaints in parental kidnaping cases where, in addition to having probable cause to believe that a violation of the Fugitive Felon Act has

occurred, there also is independent credible information that the victim child is in physical danger or is then in a condition of abuse or neglect.

We think it is important to note that of the 76 state law enforcement requests that were declined between passage of the Act and March 31, 1982, a significant number were declined for reasons wholly independent of our parental kidnaping policy guidelines. We continue to receive requests for FBI involvement in situations where the accused parent is residing at a known location in another state. In some of these situations, we have found that the asylum states previously refused to honor the requesting states' arrest warrants or extradition demands. There is, of course, no need for an FBI fugitive hunt in such situations because the whereabouts of the accused parents is known to all concerned. It would appear that these requests are merely attempts to circumvent the interstate extradition process.

Since our last report, we have become aware of two more cases in which parents, accused of felony child custody offenses in one state, had obtained presumptively valid child custody decrees in other states. We continue to believe that the involvement of the FBI in such situations would serve no genuine criminal law enforcement purpose, or, indeed, any useful purpose at all, since the asylum state could hardly be expected to agree to extradition, or removal of the child, in contravention of its own judicial decrees.

Since our last report, we have received several more requests for FBI involvement in parental abduction situations in which the accused parents were foreign nationals and had returned to their native countries with their children, in violation of state child custody decrees. However, neither unlawful flight to avoid prosecution nor custodial interference is an extraditable offense under any existing extradition treaty. Accordingly, we believe that the Fugitive Felon Act is an ineffective and inappropriate means of attempting to resolve such child custody disputes. It has been our practice to refer such complaints to the Department of State for whatever assistance they may be able to render.

Our experience in the parental kidnaping area, since passage of the Act, has brought us to the conclusion that an abducting parent is not necessarily in violation of the Fugitive Felon Act merely because such parent has been validly accused of a state felony child custody offense and is absent from the prosecuting state. For example, a Utah prosecutor recently expressed interest in obtaining FBI assistance in apprehending a mother charged with custodial

interference, a felony under Utah law. It was determined that the mother and child left the State of Utah while custody was being litigated in a Utah court. Approximately one year after the mother and child left Utah, the Utah court granted custody to the father. The State of Utah then charged the mother with felony custodial interference. In these circumstances, the mother had lawful custody of the child when she and the child left the State of Utah. Accordingly, we have concluded that in this situation, there is, as a matter of law, no probable cause basis for charging the mother with fleeing from Utah with intent to avoid prosecution for a Utah felony offense, as required by the Fugitive Felon Act.

Similarly, we received a request from a Virginia prosecutor for FBI assistance in a situation in which a father and child left Virginia several weeks before a Virginia court awarded primary custody of the child to the mother. Again, we believe we cannot, in good faith, charge such a parent with fleeing from Virginia with intent to avoid prosecution for a Virginia felony offense, as required by the Fugitive Felon Act.

In still another case, the custodial parent, the mother, resided in Indiana. The father, who lived and worked in Ohio, had visitation privileges under an Indiana custody decree. Pursuant to the visitation privileges, the children went to Ohio for a vacation with the father. Rather than returning the children at the end of the visitation period, the father fled from Ohio with the children. The State of Indiana charged the father with detaining and concealing the children, a felony under Indiana law, and requested FBI assistance under the Fugitive Felon Act. In the circumstances of this case, it appears that the father never was in the State of Indiana at any time pertinent to the offense. Accordingly, we concluded that there was no probable cause to charge the father with fleeing from Indiana with the intent to avoid prosecution for an Indiana felony offense, as required by the Fugitive Felon Act.

It also had come to our attention that several states have statutes under which child custody violations become felony offenses only when the child is removed from the state in violation of a child custody decree. In such situations, as a general rule, the offending parent has to leave the state before the state felony offense is committed. The issue of whether an accused parent may be charged with fleeing from a state with intent to avoid prosecution for a state felony, when no felony was completed before the parent left the state, was carefully reviewed in the Department. In an effort to effectuate the ends of the Parental Kidnaping Prevention Act of 1980, the Department has resolved a close issue of law in favor

of applying the Fugitive Felon Act to such cases so long as there is probable cause to believe the abducting parent had formed the specific intent to avoid a felony prosecution when exiting the state, and there is evidence to bring the case within the Department's guidelines.

A number of complaining parents and others apparently are laboring under the misunderstanding that the Act authorizes the FBI to locate and return abducted children to the custodial parents. However, a Fugitive Felon warrant confers no right on an arresting officer to take into custody anyone other than the person or persons named in the warrant. This fact was recognized by the U. S. District Court for the Southern District of California in a recent case which held that a custodial parent had no standing to compel the issuance of a Fugitive Felon warrant. Beach v. William French Smith, Civil No. 81-830-T (S.D. Cal., filed March 26, 1982). The court observed:

> The warrant, by its terms, seeks only [the abducting mother and maternal grandfather], not [the child]. Once the two fugitives are apprehended the warrant does not obligate the federal officers to continue the search for [the child]. Thus, if [the child] is not with her mother or maternal grandfather upon their apprehension, the issuance of the warrant will have no effect upon her return. Even if [the child] is with her mother and maternal grandfather upon apprehension, the warrant does not require the federal officers to turn her over to local authorities or return her to California. [The child] could be turned over to the care of neighbors or relatives. In fact, even if she is turned over to the local authorities, they are not required to give full faith and credit to the custody order unless the jurisdictional and other requirements of the Act are met.

We are aware of at least one case in which, even after the abducting parent had been arrested on a Fugitive Felon warrant, the complaining parent had to litigate the right to custody in the state where the abducting parent was arrested.

Our experience, to date, indicates that the issuance of Fugitive Felon warrants will not guarantee fast, easy solutions to parental abduction episodes. The loss of custody of a child, in many cases, produces intense emotional stress, and may result in unpredictable, destructive behavior by a parent. In recent months, in connection with or shortly after the location of certain abducting parents wanted on Fugitive Felon [illegible]nts, one abducting parent shot and killed his four year

old son and himself, another committed suicide, and a third attempted suicide. In any fugitive hunt, of course, the use of deadly force is always a possibility. Given the emotionally charged nature of parental abduction cases, we must be prepared to accept the fact that tragic episodes of violence inevitably will occur from time to time. In short, we believe that the Fugitive Felon Act is unlikely to provide the much sought after "quick fix" to the child snatching problem.

In our view, invoking the criminal justice system is an appropriate response to some, but not all, parental abductions. State prosecutors, generally, seem to exercise considerable restraint in going forward with criminal prosecutions of abducting parents, as evidenced by their apparent reluctance to extradite. It is our understanding that a number of jurisdictions, as a matter of policy, will not extradite for low grade felonies, such as custodial interference. Furthermore, we have been informed that, to date, only two states have entered into agreements with the Federal Parent Locator Service to process location requests in child custody matters. This is a further indication of an apparent lack of a sense of urgency on the part of state governments concerning the return of absconding parents for criminal prosecution.

Another avenue of federal assistance was recently opened by a court of appeals which has held that the jurisdiction of the federal civil justice system may be invoked in parental abduction matters by the parent entitled to custody. Wasserman v. Wasserman, _____ F.2d _____ (4th Cir. decided February 24, 1982).

It continues to be the Department's position that the Fugitive Felon Act should be limited to those cases in which the states have serious criminal law enforcement interests. We believe that our existing parental kidnaping policy represents a prudent and reasonable exercise of prosecutorial discretion, and renders effective assistance to state law enforcement agencies in obtaining the return of abducting parents for the purpose of criminal prosecution.

FOURTH REPORT TO CONGRESS ON IMPLEMENTATION
OF THE PARENTAL KIDNAPING PREVENTION ACT OF 1980

Pursuant to Section 10 of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611) (hereafter PKPA) the Department of Justice submits its fourth report to the Congress setting forth the steps taken by the Department to comply with the intent of Congress that the Fugitive Felon Act, 18 U.S.C. 1073, apply to cases involving parental kidnapings and resulting in interstate or international flight to avoid prosecution under applicable state felony statutes.

It continues to be the Department's policy that, as a matter of prosecutorial discretion, the filing of Fugitive Felon complaints in child custody related felony offenses will be authorized if, in addition to having probable cause to believe that a violation of the Fugitive Felon Act has occurred, and the requesting state law enforcement agency is committed to extradite and prosecute the offending parent, there also is independent credible information that the victim child is in physical danger or is then in a condition of abuse or neglect. In an effort to achieve a uniform nationwide application of our policy, we continue to require Criminal Division authorization prior to the filing of Fugitive Felon complaints in parental abduction cases. Determinations as to what constitutes a "condition of abuse or neglect" necessarily are made on a case-by-case basis. As a general rule, our policy guidelines require independent credible information of abuse or neglect that is of a continuing nature, as opposed to an isolated episode devoid of lasting consequences in which the abducting parent may have deviated from generally accepted standards of parental care. In this regard, we have specifically rejected assertions that a parental abduction, by and of itself, constitutes abuse of the child.

The FBI continues to compile and report data on all parental abduction complaints received rather than limiting the data to parental abduction cases in which state law enforcement authorities have charged an abducting parent with a felony offense and have sought assistance in apprehending the accused parent by requesting Federal authorities to charge the parent with fleeing from the state to avoid prosecution in violation of the Fugitive Felon Act. Since passage of the PKPA, our experience has shown that the vast majority of parental abduction complaints received by the FBI come from sources other than state law enforcement agencies, and involve parental

abduction episodes in which there clearly is no probable cause basis for seeking a Fugitive Felon warrant for the arrest of the abducting parent.

Since our last report, the FBI has furnished us with an updated analysis of the parental kidnaping data received during calendar year 1981. A total of 843 parental kidnaping complaint forms were received from 58 FBI field divisions covering 52 states and territories. One hundred and sixty-six of these complaints concerned parental abductions occurring prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the Act. Of the 843 complaints received during calendar year 1981, it was determined that 688 either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe the abducting parent had violated the Fugitive Felon Act. Typically, in these cases, there was no violation of a child custody decree, or no state felony charge had been filed, or there was no evidence the offending parent had fled from the state. The data indicates that during calendar year 1981, the Department took action on a total of 119 law enforcement requests for FBI assistance, under the Fugitive Felon Act, in apprehending parents charged with child custody related felony offenses. Consistent with the Department's parental kidnaping policy guidelines, as set forth above, FBI involvement was authorized in 40 cases and was declined in 79 cases. The disposition of the remaining 36 complaints had not been reported to FBI Headquarters as of December 31, 1981.

During the first nine months of calendar year 1982, 364 parental kidnaping complaint forms were received from 51 field divisions covering 40 states and the District of Columbia. Therefore, including the 36 complaints for which no disposition had been reported by the end of 1981, a total of 400 parental kidnaping complaints received consideration during the first nine months of 1982. It was determined that 328 complaints either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe that the abducting parent had violated the Fugitive Felon Act. FBI involvement was authorized in 36 cases and was declined in 23 cases. The disposition of 13 complaints had not been reported to FBI Headquarters by September 30, 1982.

In the twenty-one months between passage of the PKPA and September 30, 1982, state law enforcement requests for FBI assistance in child custody related felony cases were granted in a total of 76 cases and were declined in a total of 102 cases. Thus, the available data indicates that we have authorized FBI involvement in approximately 42 per cent of such cases. With regard to law enforcement requests received during the first

nine months of 1982 (36 requests granted, 23 requests declined) authorization has been granted in approximately 61 per cent of such cases. During the twenty-one months since passage of the PKPA, a total of 45 parents were arrested on Fugitive Felon warrants. Twenty-three of these arrests were accomplished by the FBI, twenty-one by local authorities, and one parent was arrested by another Federal law enforcement agency.

Based on numerous inquiries received by the Department, it appears that many complaining parents and others continue to have the mistaken belief that PKPA authorizes the FBI to locate and return abducted children to the custodial parents. In response to inquiries from FBI agents in the field, we have advised that the PKPA and the Fugitive Felon Act confer no authority on the arresting agents to take custody of a fugitive's children. See Beach v. Smith, 535 F. Supp. 560 (S.D. Cal. 1982). Very simply, a Fugitive Felon warrant gives the arresting agents authority to take into custody only the person or persons named in the warrant. We have further suggested that when a fugitive is arrested in the company of his child, it may be proper and appropriate to leave the child with a responsible adult relative or friend of the abducting parent. If no responsible adult is available, the arresting agents would arrange for the local child welfare agency to take custody of the child.

We noted in our last report that a substantial number of states have custodial interference statutes that become felony offenses only when the child is removed from the state in violation of a child custody decree. It has been brought to our attention that some state legislatures enacted such statutes for the specific purpose of availing the state of FBI assistance under the Fugitive Felon Act. As a general rule, such statutes require that the offending parent has to leave the state before the state felony offense is completed. The issue of whether an accused parent may be charged with fleeing from a state to avoid prosecution for a state felony, when no felony was completed before the parent left the state, was carefully reviewed in the Department. In an effort to effectuate the ends of the PKPA, the Department has resolved a close issue of law in favor of applying the Fugitive Felon Act to such cases so long as there is probable cause to believe the abducting parent had formed the specific intent to avoid a felony prosecution when exiting the state, and there is evidence to bring the case within the Department's parental kidnaping policy guidelines.

In connection with this issue, the following item was published in the United States Attorneys' Bulletin, Vol. 30, No. 12 (June 25, 1982)

Filing of Unlawful Flight to Avoid Prosecution (UFAP) Complaints in Parental Abduction Cases

A number of United States Attorneys have been advised that the state parental abduction or custodial interference statute in force in their Districts cannot serve as a predicate for the filing of complaints charging unlawful flight to avoid prosecution in violation of 18 U.S.C. 1073. Typically, those statutes provide that the offense does not become a felony until the child has been removed from the state. The states which have this type of statute include the following: Georgia, Missouri, North Carolina, Oregon, South Carolina, Texas and Virginia.

The Criminal Division has reconsidered the issue and has determined that there is an appropriate legal basis for concluding that a parent violates section 1073 when he or she removes their child from such a state with intent to violate a custody decree of that state. A detailed memorandum of law supporting this conclusion may be obtained from the General Litigation and Legal Advice Section of the Criminal Division. Accordingly, prior advice to the contrary should be disregarded. However, when a UFAP complaint is based on this type of state statute, the complaint should quote the words of the statute and spell out exactly what the state accuses the defendant of having done, so that the magistrate may make an independent assessment of whether 18 U.S.C. 1073 has been violated. UFAP complaints based on parental kidnapping are, of course, not to be filed until Criminal Division authorization has been obtained. USAM 9-69.421.

Recently, a request was received from a South Carolina prosecutor for FBI assistance in apprehending a parent charged with a felony violation of the South Carolina custodial interference statute. Section 16-17-495 of the South Carolina Code provides in pertinent part, that ". . . it shall be a felony for any person with the intent to violate . . . [a South Carolina child custody] . . . order to take or transport . . . any such child from any point within the state to any point outside the limits of this state." There was substantial evidence indicating that the abducting parent and child had departed from South Carolina. In addition, there was sufficient information indicating that the child was in a condition of abuse or neglect so as to bring this within our parental kidnaping policy guidelines. Accordingly, we authorized the filing of a Fugitive Felon complaint. The United States Magistrate, however, refused to issue an arrest warrant because

he found no probable cause to believe the abducting parent fled from South Carolina with intent to avoid prosecution.

In another recent case, a father was charged with a felony child custody offense in Ohio, and the state prosecutor requested the filing of a Fugitive Felon complaint. It was determined, however, that the father departed from Ohio with the child several weeks prior to the commencement of the Ohio custody proceedings. In these circumstances, the father had as much right to the custody of the child as the mother when he departed from Ohio. Therefore, the request was declined because there was no probable cause to charge the father with fleeing from Ohio with intent to avoid a felony prosecution. Clearly, in our view, the mere fact that an abducting parent has departed from a state with the child will not be sufficient to provide probable cause to believe the parent fled with intent to avoid prosecution.

Data accumulated since passage of the PKPA reflects that the Fugitive Felon Act simply has no application to over 84 per cent of the parental kidnaping complaints received by the FBI. In response to the will of Congress, however, there has been a very significant increase in the use of the Fugitive Felon Act to assist state law enforcement agencies in locating and apprehending fugitives charged with felony child custody offenses.

It continues to be the Department's position that the Fugitive Felon Act should be limited to those cases in which the states have serious criminal law enforcement interests. It should be borne in mind that most parental abductions are perpetrated by persons who are generally law abiding and present no threat to the community at large. Their violation of the court custody decree is often motivated by a sense of grief and bereavement, and the affection for the child in their custody is generally a guarantee of the victim's safety and well-being. Scarce federal criminal law enforcement resources should not be squandered in such cases, but should be reserved for those where the Fugitive Felon Act can serve its avowed purpose of aiding the states to bring serious criminals to justice, where the child is endangered, and other means have failed. This policy does not leave the custodial parent or complaining state remediless. The PKPA made available to the states, as of July 1981, the tracing facilities of the Federal Parental Locator Service for use in abduction cases. As of this writing 15 states have concluded contracts for its services. The recently enacted Missing Children Act, if it lives up to its sponsors' expectations, should prove of great assistance in locating many children abducted by their parents. Finally, both state and federal courts have recently been entertaining actions not only against abducting parents, but against their family, friends and attorneys to compel them to reveal the fugitives' whereabouts or to punish them for assisting in the flight or concealment. We believe that our existing parental kidnaping policy represents a prudent and reasonable exercise of prosecutorial discretion, and renders effective assistance to state law enforcement agencies in obtaining the return of abducting parents for the purpose of criminal prosecution.

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 27, 1982

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is with respect to your longstanding interest in Department of Justice prosecution policy in parental kidnaping cases. I am pleased to report that the Department is modifying its policy to expand the number of cases in which federal officials will be seeking to locate and apprehend parents who have been charged with State felony offenses involving custodial interference.

By way of background, the legislative history of the Parental Kidnaping Prevention Act of 1980 urged the Department to take a more active role in seeking to locate and apprehend persons charged with parental kidnaping cases constituting a State felony. In the nearly two years since passage of that Act, the Department's policy has been to file Fugitive Felon complaints in child custody cases only if, in addition to having probable cause to believe that a violation of the Fugitive Felon Act (18 U.S.C. 1073) has occurred, the requesting State law enforcement agency is committed to extradite and prosecute the offending parent, there is independent credible information that the victim child is in physical danger or is then in a condition of abuse or neglect and the Criminal Division has authorized filing of a fugitive felon complaint. These last two requirements -- that the child be in danger or a condition of abuse or neglect and that the Criminal Division authorize parental kidnaping complaints -- have provoked controversy as they are felt to restrict very substantially federal involvement in such cases.

Responding to calls for expanded federal involvement in parental kidnaping cases, the "danger, abuse or neglect" requirement and the requirement of Criminal Division authorization are being rescinded for a one-year period. In short, for a one-year trial period parental kidnaping cases will be handled on the same basis as other fugitive felon cases. The effect of this policy change will be to increase the number of cases in which fugitive felon warrants will be obtained by United States Attorneys and fugitive investigations initiated by the Federal Bureau of Investigation.

Again, I am pleased to be able to announce this change in policy as I know how concerned you and many of your colleagues have been over the more restrictive policy which has been in force. Of course, I hope you will not hesitate to call on me if you have questions regarding the new policy.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

U.S. Department of Justice
Office of Legislative Affairs

Office of the
Assistant Attorney General

Washington, D.C. 20530

1/5/83

Eric Sterling --

Attached per your request is the text of the telex to U.S. Attorneys re parental kidnaping. Re handling of telephone and walk-in inquiries, I gather that both the FBI and U.S. Attorneys advise parents to contact the local DA or police. In short, we try to channel everything through the locals as we cannot properly proceed without touching base with local officials in any event.

CHC

Cary

OLA

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
DEPARTMENT OF JUSTICE GENERAL LITIGATION & LEGAL ADVICE SECTION CRIMINAL DIVISION LL:EHF:ibm	ACTION INFO.	UNCLASSIFIED
ACCOUNTING CLASSIFICATION 3 B 1317	DATE PREPARED DECEMBER 23, 1982	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL	PHONE NUMBER 202 724-6971	
NAME EZRA H. FRIEDMAN		

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: ALL UNITED STATES ATTORNEYS

RE: PARENTAL KIDNAPINGS - FUGITIVE FELON ACT

REFERENCE IS MADE TO UNITED STATES ATTORNEYS' MANUAL, SECTION 9-69.421 (PARENTAL KIDNAPING).

EFFECTIVE IMMEDIATELY THE TWO REQUIREMENTS OF USAM SECTION 9-69.421 - THAT THERE BE EVIDENCE THAT THE VICTIM CHILD IS IN PHYSICAL DANGER OR IN A CONDITION OF ABUSE OR NEGLECT, AND THAT CRIMINAL DIVISION APPROVAL BE SECURED BEFORE A COMPLAINT MAY BE FILED UNDER THE FUGITIVE FELON ACT-ARE SUSPENDED ~~INDEFINITELY~~ UNTIL FURTHER NOTICE. TO ALLOW THE FBI AND THE CRIMINAL DIVISION TO MONITOR THE EFFECT UPON THE BUREAU'S CASELOAD RESULTING FROM THIS ACTION OVER A ONE-YEAR PERIOD, YOU ARE REQUESTED TO CONTINUE TO REPORT REQUESTS FOR ASSISTANCE TO THE BUREAU WHETHER OR NOT COMPLAINTS ARE AUTHORIZED. IN ORDER TO ASSIST THE BUREAU IN DETERMINING THE APPROPRIATE PRIORITY TO ASSIGN THE WARRANT, YOU ARE ALSO REQUESTED, WHEN THE INITIAL CONTACT IS MADE WITH YOUR OFFICE, TO ASCERTAIN INFORMATION RELATIVE TO THE DANGER TO THE CHILD AND OTHERS POSED BY THE ABDUCTING PARENT. AS IN OTHER

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
1	2	UNCLASSIFIED

14-102

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-33.304

* U.S. GOVERNMENT PRINTING OFFICE : 1976—O-214-928

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE	SECURITY CLASSIFICATION
DEPARTMENT OF JUSTICE	ACTION: INFO:	
ACCOUNTING CLASSIFICATION: 3B 1317	DATE PREPARED	TYPE OF MESSAGE: ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS
FOR INFORMATION CALL		
NAME: EZRA H. FRIEDMAN	PHONE NUMBER: 202 724-6971	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

FUGITIVE FELON CASES THE FIELD OFFICE WILL ASSIGN THE PRIORITY. PLEASE BEAR IN MIND THAT THE FUGITIVE FELON ACT WAS ENACTED TO ASSIST THE STATES IN THEIR EFFORTS TO APPREHEND AND PROSECUTE CRIMINALS WHO HAVE GONE BEYOND THEIR JURISDICTION. ACCORDINGLY, CARE SHOULD BE TAKEN NOT TO AUTHORIZE WARRANTS WHERE THERE IS REASON TO BELIEVE THAT THE STATE WILL NOT EXTRADITE AND PROSECUTE ONCE THE FUGITIVE IS LOCATED AND ARRESTED BY THE FBI.

ATTORNEYS FAMILIAR WITH THIS POLICY ARE AVAILABLE ON FTS 724-7526, 6971, AND 6893.

LAWRENCE LIPPE, CHIEF
GENERAL LITIGATION AND
LEGAL ADVICE SECTION
CRIMINAL DIVISION

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
2	2	UNCLASSIFIED

STANDARD FORM 16
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-33.306

U.S. GOVERNMENT PRINTING OFFICE: 1968-O-314-688

16-102

[From the Rocky Mountain News, Oct. 28, 1981]

Mother of Dead Children: Father a Baby Murderer

(By Tim McGovern)

Marilyn Hutchinson, the Lakewood mother whose two small children apparently were murdered by her estranged husband as he took his own life, blasted her dead spouse Tuesday as "a baby murderer" and said that he killed the two children "purely out of revenge toward me."

The 28-year-old mother said that Jon Hutchinson, her high school sweetheart in Middletown, Ohio, and husband of nearly nine years, "killed those children out of revenge and spite."

She had filed for a divorce in April and she said, "I wanted to make this a peaceable divorce. But he doesn't like to lose and he wasn't going to lose. He just wanted me to lose everything, too. He knew that the worst thing he could do to me was to hurt the children."

The bodies of Hutchinson, 31, and the couple's two children, Joseph, 18 months, and Cecily, 5½, were found Monday in his green Volkswagen Dasher at the Top-of-the-World Campground in Pike National Forest in southwest Jefferson County.

A rubber garden hose was found at the scene attached to the car's exhaust pipe and leading through a window into the car. A Jefferson County sheriff's spokesman scotched earlier rumors that the bodies were found in plastic bags inside the car.

James Buckley, chief deputy coroner, said that results of laboratory tests Tuesday showed that the victims died of carbon monoxide poisoning. He said the three died at approximately the same time but that Hutchinson had been the first to die. That was evident because there was more carbon monoxide in his children's bodies than in his, Buckley said, indicating they had breathed it for a longer time before dying.

Buckley said his office estimates that the three died on Oct. 20, three days after Hutchinson picked up the children from their home at 1351 S. Cody Way in Lakewood, ostensibly for a trip to visit relatives in Boulder.

Mrs. Hutchinson said Tuesday, however, that she thinks her husband killed the children and himself on the same day he took them—Oct. 17. None of the diapers she had packed for her son had been used, she said, and everything else in his suitcase was untouched.

In another development, deputy coroner Harold Dean, who handled the initial investigation of the deaths, resigned suddenly Tuesday, citing "personal reasons."

Buckley said he didn't know whether the resignation was in any way related to the Hutchinson case.

Hutchinson was arrested in May for the alleged abuse of the couple's young son. That was about a month after the couple separated. But the charges were dropped when investigators couldn't gather enough evidence in the case and when Hutchinson agreed to undergo counseling at the county's Department of Social Services.

His wife said the incident occurred when he visited the house and began assaulting her. She said she grabbed the baby but he pushed the baby from her arms and he fell to the floor, bruising his head.

Two months later—on July 19—Hutchinson snatched the two children and took them to Boise, Idaho. After four days, according to Lakewood police, Boise authorities arrested him and returned the children to their mother. Parental kidnapping charges were pending against the man when the latest events occurred.

After the Oct. 17 kidnapping, Lakewood police issued a $50,000 warrant charging Hutchinson with custody violation.

Speaking with passion but without tears on Tuesday, Mrs. Hutchinson said that her estranged husband, who had been living with a brother in Erie, had a violent temper and that he had threatened on Oct. 15—two days before the kidnapping—to kill himself if she didn't take him back.

She said that he forced her into his car, drove her around, railed at her about the divorce and about her dating another man, then returned her to her home and struck her with the car door.

She said she got him to agree to see his psychiatrist the next day, which he did.

But then on Oct. 17, he showed up at the house in an angry mood and had to force his daughter to get into the car with him, Mrs. Hutchinson said.

Then, 10 minutes after he had left with the children, he phoned her saying, "I hope you'll be very happy because you'll never see the kids alive again."

She said that her husband never had wanted custody of the children. She said he had filed a custody suit but soon dropped it. "He admitted he filed it only to scare me," Mrs. Hutchinson said.

Hutchinson was employed since 1975 as a traveling agent by the Western Weighing and Inspection Bureau, a railroad service firm. Dwight Thomason, district manager of the firm, said Tuesday that Hutchinson was "a good employee and an intelligent young man. He did everything that was assigned to him in an exemplary manner."

Thomason said Hutchinson seemed proud of his two children and often showed their pictures around the office. "He was very attached to them," he said.

Mrs. Hutchinson painted a different picture, saying that he often treated his children harshly. Once, she said, in a rage he kicked the family dog in the face, scaring his young daughter.

"With everyone else, he was very passive but with us he was anything but passive," she said. She said that when he was angry, he kicked walls and broke windows.

"He was a monster, a schizophrenic," she said. "His act speaks for itself. To kill two children to get revenge on their mother is the act of a perverted mind."

Then she added, "I don't want him to be remembered as anything but a baby murderer. How could he do that? I hate him."

Please help our Mommy find us!

These children were
Taken by
Mark Kemp Bayless
& Wife Carol Corena
(Brereton)

Disappeared
July 1977

Still missing

Contact:
Edith K. St. John
121 Elliott Street
Janesville, Wis. 53545
Phone: 608 / 752-8789

born: 8/18/72 4/24/74

BENJAMIN (8) AND REBECCA (6) BAYLESS

September 9, 1981

Mr. Eric Sterling
Sub-Committee on Crime
207 Cannon House Office Building,
Washington D. C. 20515

Dear Sir:

Enclosed is a list of the times we have contacted Mr. Allan Thompson, F.B.I. agent and Mr. Grant Johnson, Federal Attorney, both in Madison, Wisconsin in regards to their help in looking for Mark Kemp Bayless and the two children who are missing. I am also sending copies of some correspondence from our District Attorney's office, etc.

I am also enclosing pictures of Benjamin and Rebecca Bayless that were taken in November, 1976 and are the best pictures we have of them.

I have spent thousands of dollars and thousands of hours, have traveled over 20,000 miles searching for these children, tracking down leads and doing everything possible to try and find them because we have not been able to get cooperation from the Justice Department and other law agencies who have told me that if Mark had taken Karen's car or money they would do everything they could to find Mark but because it is her children they have a POLICY not to get involved. It is a very sad commentary on the value system in our country where tangible things are more important than the lives and futures of children.

If I can do anything else to help get the Justice Department to do their job just let me know. I was taught that laws were made to be enforced and obeyed but it doesn't seem to work that way today. How I do wish I could have the opportunity to talk to these people and tell them of the anguish and horror of child snatching not only for the children but for everyone concerned.

Good luck, my prayers are with you.

Sincerely,

Edith K. St. John

Edith K. St.John (Mrs. Wm. A.)

Please help our Mommy find us!

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Contact:
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Phone: 608 / 752-6789

September 9, 1981

born 8/18/72 4/24/74

BENJAMIN (♂) AND REBECCA (♀) BAYLESS

CONVERSATIONS AND CORRESPONDENCE WITH F.B.I. AND JUSTICE DEPARTMENT PERSONNEL

1. June 1, 1978: Wisconsin made Interferrence with Child Custody a felony offense. It had been a misdemeanor until now.

2. Sept.22, 1978: The Rock County District Attorney issued a felony warrant for Mark.

3. August 17, 1979: Thomas Box of D.A.'s office sent letter to Alan Thompson, F.B.I. asking for help locating Mark. (copy of that correspondence enclosed).

4. Oct. 11, 1979: Called Alan Thompson, F.B.I. in Madison. He said he would be more than happy to go after Mark if he could get a warrant from Justice Dept. Suggested I call Grant Johnson, Federal Attorney and talk to him. Mr. Johnson told me that the laws are on the books to go after Mark for "unlawful flight to avoid criminal prosecution" but it was the Justice Department's POLICY not to get involved unless they had positive "proof" that the children were being physically abused or in danger of their lives. Their hands are tied because of this POLICY. He suggested writing my Congressmen, which I did.

5. Oct. 28, 1979: Sent Grant Johnson letter with copy of letter sent to him which I got instead. (copies enclosed).

6. Nov. 9, 1979: Called Grant Johnson to talk about F.B.I. and Justice Dept. POLICY. Asked him if he had seen the letter from Gaylord Nelson with a copy of the letter from Francis M. Mullen Jr., Ass't Director, Criminal Division, F.B.I. in Washington D.C. outlining things necessary for their help. Said he had not so read parts of it to him. They said it is not their POLICY to get involved unless we can prove the children are physically or psychologically harmed by this. He said if I can get a doctor's statement telling the harmful effects on the children then they might look at it again.(letters encl.)

7. June 25, 1980: Dr. Knaiz told Karen the children had to be found because of the bi-polar Affective Disorder she has that the children could inherit. Tom Box called Alan Thompson, F.B.I. about this. He said to have Karen send certified letters to Mark at all known relatives asking him to get in touch with her, which she did and they were all returned, except the one in care of Chalmers Bayless, Mark's father. (letter from doctor enclosed).

8. August 25, 1980: Tom Box sent letter to Alan Thompson again requesting assistance. (letter enclosed). This letter was never answered.

9. Nov. 11, 1980: District Attorney, Stephen Needham wrote letter to U.S. Attorney, Madison regarding matter. (letter enclosed).

10. Nov. 17, 1980: Talked with D.A. He hasn't heard anything from Madison.

E.K.S.

Please help our Mommy find us!

Taken by
Mark Kemp Bayless
& Wife Carol Corena
(Brereton)

Disappeared
July 1977

BENJAMIN (8) AND REBECCA (8) BAYLESS

Contact:
Edith K. St. John
121 Elliott Street
Janesville, Wis. 53545
Phone: 608 / 752-8789

(2)

11. Dec. 5, 1980: Called Grant Johnson about the F.B.I., told him that Alan Thompson said the F.B.I. would get into the search. Said he would talk to him.

12. Dec. 30, 1980: Judge Lussow said Wisconsin had jurisdiction and if we can get notice to Mark of the hearing, he will hold a termination of parental rights. He also said that should the F.B.I. locate Mark he would immediately take him into court. We knew the "Parental Kidnapping Prevention Act" had been signed into law by President Carter on Dec. 28, 1980 and were naive enough to think that surely the Justice Department of the United States would uphold the laws.

13. Feb. 2, 1981: Termination hearing postponed until July 1, 1981 to see what the F.B.I. could come up with. The certified letters to Mark c/o relatives had been returned.

14. Mar. 3, 1981: Tried to call Grant Johnson and Alan Thompson, not in. Told they would call me later.

15. May 18, 1981: Called Alan Thompson. Now they claim they don't have any warrant from Rock County. Called Steve Needham and told him. He said he is going to assign Thomas Box to this so he can find out just waht they want and why nothing is being done about Mark. Talked to Grant Johnson who said their policy was the same as it was two years ago. I told him he was wrong.

16. June 11, 1981: Letter to Mr. Frank Tuerkheimer, U.S. Attorney (letter enclosed).

17. July 9, 1981: Copy of letter to Frank Tuerkheimer from D. Lowell Jensen, by Lawrence Lippe. (copy enclosed).

18. July 15, 1981: Letter to Steve Needham, D. A. from Frank Tuerkheimer (letter enclosed).

19. July 27, 1981: Letter to my daughter, Karen Meyer-Wiltse, from Stephen Needham (letter enclosed).

20. July 30, 1981: Called Grant Johnson about these letters and the Justice Dept. not enforcing their own laws. He was very obnoxious about me calling him and I told him I hoped he enjoyed his salary he got for ignoring their own laws. He told me it was a cheap shot and I told him not to think that was a cheap shot but to think of a young mother who has not known where or how her children were for over four years and know that if it was her auto that had been stolen they would do everything they could to track Mark down, but because it is only small children no one can be bothered. That is what I would call a cheap shot. Then I hung up before I said something I might be sorry for.

Edith K. St. John

July 2, 1990

Karen Heyer
1421 Canyon Dr. #15
Janesville, WI 53545

Dear Karen:

This letter is in response to your question concerning your illness and its possible effects on your offspring.

You are being treated for a Bi-Polar Affective Disorder, also known as Manic-Depressive Disease. Though all of the chemistry of this disorder is not completely understood, it is known that Lithium is a very effective medication for its treatment. What is presently known strongly suggests that this medical disorder is most probably inheritable.

It is possible and likely that your children can inherit this disease. If so, the persons responsible for their parenting and medical care must know of your history so that proper diagnosis and treatment can be provided to them. In children the disorder can be manifested variably as learning problems, behavior problems, emotional lability, or frank depression and manic psychosis.

I strongly recommend that you inform the children and their caretakers of your history.

Sincerely,

Harry Kniaz

Harry Kniaz, M.D.
Dipolmate of the American Board of
Psychiatry and Neurology
Certified in Child Psychiatry

Sandra Eisemann

Sandra Eisemann, Ph.D.
Licensed Psychologist

HK,SE/tm

COUNTY OF ROCK
COURT HOUSE
Stephen M. Needham
District Attorney

IV-D Agency
Child Support
Unit

51 South Main St.
Janesville, Wisconsin 53545

Telephone (608) 755-2200

July 27, 1981

Ms. Karen F. Wiltse
121 Elliott St.
Janesville, Wisconsin 53545

Re: Issuance of Federal Warrant for Mark Bayless

Dear Mrs. Wiltse:

You will find attached a copy of a July 15, 1981 letter from Grant Johnson, Assistant United States Attorney, Wisconsin Western District referring to a letter that he received from the U.S. Department of Justice regarding our request to issue a Federal Warrant against Mark Bayless for parental kidnaping.

As you will read in these letters, the United States Attorneys Office declines to issue a Federal Warrant for Mark based on the reason that we do not have any credible evidence to show that they are in physical danger or in a condition of abuse or neglect. Therefore, our office must at this point close our file in attempting to get this Federal Warrant issued against Mark.

You will also read in this opinion from the U.S. Department of Justice that they do not feel that our Felony Warrant against Mr. Bayless is legitimate because he did not in fact abduct the children from the State of Wisconsin. We will, however, leave our Felony Warrant active at this time and worry about extradition if and when Mark is apprehended.

I am sorry that our efforts have failed, and I do wish you good luck in any further attempts you might have in this regard.

Sincerely,

STEPHEN M. NEEDHAM
District Attorney

SMN/ls

encl sure

cc: Edith St John

U S Department of Justice

United States Attorney
Western District of Wisconsin

Post Office Box 112, Federal Building
Madison, Wisconsin 53701

608/264-5158
FTS/364-5158

July 15, 1981

Mr. Steven Needham
District Attorney
Rock County
Rock County Courthouse
51 South Main Street
Janesville, WI 53545

Re: Issuance of a Federal Warrant for Mark K. Bayless

Dear Mr. Needham:

Enclosed please find a copy of a letter received from the United States Department of Justice regarding the request for a Fugitive Felon Act warrant against Mr. Mark Bayless. Obviously from the reading of the letter the Department of Justice has refused to grant this office permission to issue process.

If you have any questions please feel free to contact me.

Sincerely,

FRANK M. TUERKHEIMER
United States Attorney

BY

GRANT C. JOHNSON
Assistant United States Attorney

GCJ:pl

Enclosure

U.S. Department of Justice

DLJ:LL:AFN:gvr

Washington, D.C. 20530

JULY 9 1981

RECEIVED

JUL 13 1981

U.S. ATTORNEY
Western District—Wisconsin

Mr. Frank M. Tuerkheimer
United States Attorney
Western District of Wisconsin
Madison, Wisconsin

Attention: Grant Johnson
Assistant U.S. Attorney

Re: Mark Bayless
Fugitive Felon Act -
Parental Kidnaping

Dear Mr. Tuerkheimer:

This is in response to your letter of June 22, 1981, enclosing correspondence from the District Attorney of Rock County, Wisconsin, requesting Federal assistance, under the Fugitive Felon Act, in apprehending Mark Bayless, who is charged with interference with child custody, a felony under Wisconsin law.

As you know, it is the Department's policy to limit FBI involvement in "child snatching" cases, under the Fugitive Felon Act, to those situations where there is independent credible information that the child is in physical danger or is then in a condition of abuse or neglect.

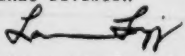
Based on our review of the materials submitted with your letter, we cannot conclude that the Bayless children are in a condition of abuse or neglect. Furthermore, under the facts of this particular case, it is questionable whether Wisconsin authorities could successfully demand the extradition of Mark Bayless from another state. It appears that Mr. Bayless had custody of the children in Utah pursuant to court authorized visitation rights, and that he subsequently failed to return the

children to his former wife. Thus, it would appear that Mr. Bayless never fled from the State of Wisconsin. The extradition statute, 18 U.S.C. §3182, seems to require personal presence in the state where the crime was committed. In a case still cited as authority, the Supreme Court has held that constructive presence is not enough for extradition because the word "fled" requires personal presence under the extradition statute. Hyatt v. Corkran, 188 U.S. 691 (1903). The Fugitive Felon Act is not an alternative to extradition, and individuals arrested on Fugitive Felon warrants should not be removed from the asylum state under Rule 40 F.R. Cr. P., where no Federal prosecution is intended. See United States v. Love, 425 F. Supp. 1248 (S.D. N.Y. 1977).

For the foregoing reasons we must decline authorization to seek a Fugitive Felon warrant in this situation.

Sincerely,

D. LOWELL JENSEN
Assistant Attorney General
Criminal Division

By: 

LAWRENCE LIPPE, Chief
General Litigation and
Legal Advice Section

June 11, 1981

Mr. Frank M. Tuerkheimer
U.S. Attorney
State of Wisconsin Western District
P.O. Box 112
Madison, Wisconsin 53701

Re: Issuance of a Federal Warrant for Mark K. Bayless

Dear Mr. Tuerkheimer:

I am writing this letter requesting the issuance of a federal warrant under §1073 of Title 18, of the United States Code regarding parental kidnapping.

My office, and representatives of my office, have been in contact with you and the F.B.I. regarding this case on several occasions. Since the adoption of the Wallop Amendment, Public Law 96-611 effective December 28, 1980, this mandates the issuance of federal warrants upon proper application in instances of child snatching. I am now requesting that this federal warrant now be issued for Mr. Mark K. Bayless and I am indicating to you that our office will definitely extradite and prosecute Mr. Bayless upon his apprehension.

As indicated in the past correspondence with your office, and also by attached letters, you will see that besides other obvious reasons, the children of Karen and Mark may be suffering from a Bi-Polar Affective Disorder, also known as Manic-Depressive Disease as indicated by Karen's doctor in his July 9, 1980 letter. It is also believed at this time that their father Mark is preventing them from attending school as all our investigations have indicated.

If you have any questions regarding this matter or need any further information, please feel free to contact me.

Sincerely,

Stephen M. [illegible]
District Attorney, Rock County

SMH/ss

Enclosure

COUNTY OF ROCK
COURT HOUSE
Stephen M. Needham
District Attorney

IV-D Agency
Child Support
Unit

51 South Main St.
Janesville, Wisconsin 53545

Telephone (608) 755-2200

August 17, 1979

Mr. Alan J. Thompson
P.O. Box 5408
Madison, Wisconsin 53705

Re: Felony Warrant - Mark K. Bayless
94671 - Interference with Child Custody

Dear Agent Thompson:

Regarding our August 16, 1979 telephone conversation involving the above matter, I would very much appreciate the help of the FBI in trying to apprehend Mr. Bayless.

I have sent the certified copy of the Complaint & Warrant to the U.S. Attorney Mr. Tuerkheimer. Attached you will find a copy of that letter, copy of the Warrant and Complaint, an information sheet on the case in affidavit form and a number of correspondent letters that may help this investigation.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

Thomas W. Box

THOMAS W. BOX
Special Investigator

TWB/ss

Enclosure.

August 17, 1979

Mr. Frank M. Tuerkheimer
U.S. Attorney
State of Wisconsin Western District
215 Monona Drive
Madison, Wisconsin 53703

Re: Felony Warrant - Mark K. Bayless

Dear Mr. Tuerkheimer:

On August 16, 1979 I contacted FBI Special Agent Allan J. Thompson concerning the above felony warrant for Interference With Child Custody.

On June 26, 1977 Mr. Mark Bayless took his two minor children, Benjamin, DOB 8/18/72 and Rebecca, DOB 4/24/74 from the legal custody of mother, Karen (Bayless) Heyer for his two month court ordered visitation. Mr. Bayless failed to return the two children and has not been seen or heard from since.

I had issued a felony warrant for Mr. Bayless for interference with child custody. On January 22, 1979 I had confirmed his address as 300 Highway 28, P.O. Box 1063, Crystal Bay, Nevada. I had advised the Washoe Co. Sheriff's Dept. of the warrant but by the time they got to it Mr. Bayless had left the area and is believed to have gone to his home state of Utah or to California. It is for that reason I contacted the FBI and requested that they might get involved in this case.

I am assured that Agent Thompson will be in contact with you requesting a Federal Warrant be issued for "Fleeing to Avoid Prosecution" and we will definitely extradite on our matter.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

THOMAS W. BOX
Special Investigator

TWB/ss

In regard to our telephone conversation on July 17, 1980 involving the above matter, I have enclosed copies of the letter from Drs. Harry Kniaz and Sandra Bierman concerning the complainant Karen Meyer and her children in reference to the manic-depressive disease and the treatment thereof.

After you suggested that Mr. Meyer try to contact Mark Bayless, her ex-husband by letter concerning the disease and the needed treatment of her children, I contacted Mrs. Meyer and she immediately sent letters out to the parents of Mr. and Mrs. Mark Bayless and his present wife Carol Bayless to forward the letters regarding this situation. On July 19, Mrs. Meyer sent two letters, one to Mark Kemp Bayless in care of Donald S. Brereton [illegible] Wendell Avenue, Schenectady, New York, 12308 and to Mark Kemp Bayless, c/o Chalmers Bayless, L/T/A 4174 Dover Lane, Provo, Utah. The letter to Mark Bayless c/o Donald S. Brereton was returned through the mail with a note "return to sender - not here". The second letter sent through his father, Chalmers Bayless, was never returned but as of this date no response to either one of these letters has been received by this office or Karen Meyer.

It is our intention at this time to request that you once again bring this before the Federal Attorney and ask that the FBI now be allowed to get involved in this case as there is a definite medical need for the location of these children as outlined in the July 9, 1980 letter from Drs. Harry Kniaz and Sandra Bierman.

Please advise this office as soon as possible regarding this matter.

Sincerely,

Thomas W. Fox
Special Investigator

November 11, 1980

United States Attorney
215 Monona Avenue
Madison, Wisconsin

Dear Sir:

Representatives of my office have contacted your office in the past as well as the offices of the FBI. While I am sure this is not a high priority matter for your office, I would request the issuance of a felony warrant on the enclosed matters.

While your office should be aware of th matter, enclosed are copies of pleadings and letters from my file. I believe they provide the basis for the issuance of a federal warrant but if there is anything more required, please call me at your earliest convenience and I will forward any necessary documents.

Thank you.

Very truly yours,

STEPHEN M. NEEDHAM
District Attorney

SMN/jmb

Enclosures

CRIMINAL COMPLAINT

STATE OF WISCONSIN, County of Rock } ss. CIRCUIT COURT, BRANCH

THE STATE OF WISCONSIN

Plaintiff,

- vs -

MARK K. BAYLESS

Defendant.

CRIMINAL

COMPLAINT

CASE NO.

Thomas W. Cox being first duly sworn, on oath says (that he is informed and verily believes) that on the ... day of ..., 19 77, at the City of Janesville in said County the defendant Mark K. Bayless did

(Here state offense in statutory language)

intentionally withhold for more than 12 hours beyond the court approved visitation period, children under the age of fourteen years from the parent having legal custody under a divorce judgment without the consent of said parent or of the court

contrary to section 946.71 (3) of the Wisconsin Statutes and subject to a penalty of a fine of not more than $10,000.00, imprisonment of not more than two years or both and all against the peace and dignity of the State of Wisconsin and prays that the defendant be arrested and dealt with pursuant to and according to law; that the basis for affiant's allegation is that he is a Special Investigator with the Rock County District Attorney's Office; that he has read the Findings of Fact and Conclusions of Law and Decree of Divorce in a case entitled Mark K. Bayless vs. Karen R. Bayless, District Court 3rd Judicial District Salt Lake City, State of Utah, case No. 144931 and No. 144946 and discovered that Mark K. Bayless was married to Karen R. Bayless on August 14, 1970 and divorced on August 28, 1974. That there were two children born as a result of that marriage to wit: Benjamin R. Bayless, DOB 4/30/72, and Rebecca R. Bayless, DOB 4/24/74. That the Decree of Divorce awards custody of said children to Karen R. Bayless and to Mark K. Bayless having a right to visit said children for a two month period during the months of June, July and August of each year; that Karen Meyer, formerly known as Karen R. Bayless, informed this officer that Mark K. Bayless had said children in Utah on June 26, 1977 but failed to return said children on August 26, 1977. That said Karen Meyer attempted to contact Mark K. Bayless but has been unable to locate said defendant; that Mark K. Bayless as to this date failed to return said children to Karen R. Meyer.

(Recite evidence showing probable cause and reliability of informants)

Subscribed and sworn to before me on

Complainant

District Attorney Judge Court Commissioner

Approved for filing

District Attorney Court Commissioner

I find that probable cause (exists) (does not exist) that the crime was committed by the defendant and order that he be (held to answer thereto) (released forthwith).

Dated

Judge Court Commissioner

WARRANT

STATE OF WISCONSIN CIRCUIT COURT - [illegible] ROCK COUNTY

THE STATE OF WISCONSIN, Plaintiff

-vs- WARRANT

MARK K. BAYLESS, Defendant

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:

A complaint, copy of which is attached, having been filed with me accusing the defendant of committing the crime(s) of:

Interferance with child custody,

contrary to Section(s) 946.71 (3)

of the Wisconsin Statutes, and I having found that probable cause exists that the crime(s) was (were) committed by the defendant,

You are, therefore, commanded to arrest the defendant and bring him before me, or, if I am not available, before some other judge of this county.

*Check if applicable ☐
Although the offense charged is a misdemeanor whose maximum penalty does not exceed one year, I believe the defendant will not appear in response to a summons.

Dated this 22 day of September, 19 79.

Judge

STATE OF WISCONSIN)
)SS.
COUNTY OF ROCK)

I certify that I have arrested the within named defendant on _____ (date of arrest)

at _____ (place of arrest) at _____ (time of arrest)

Fees $_____

Mileage $_____

Total $_____

_____ Signature of arresting officer, title, agency

Thomas W. Box being first duly sworn, on oath, deposes and says:

That he is a special investigator for the Rock County, Wisconsin District Attorney's Office and that he is informed and verily believes

That on August 14, 1970 Mark K. Bayless and Karen R. St. John were married.

That as a result of that marriage two children were born, to-wit: Benjamin C. Bayless, DOB 8/18/72 and Rebecca R. Bayless, DOB 4/24/74.

That on August 28, 1974 Mark and Karen Bayless were divorced in the District Court, 3rd Judicial District, Salt Lake City, State of Utah Case #D-14931 and D-14949.

That as a result of that divorce and subsequent June 10, 1976 order, Karen (Bayless) Beyer was granted legal custody of the two minor children with the plaintiff, Mark K. Bayless given visitation rights to those minor children for a two month period between June, July and August.

That in March of 1977 Mark Bayless arrived in Janesville, Wisconsin for the purpose of visiting those minor children and on June 26, 1977 departed Janesville, Wisconsin with those minor children for his two month visitation.

That on August 26, 1977 Mark Bayless failed to return the two minor children to the legal custody of their mother, Karen Beyer.

That Mark Bayless and the two minor children have not been seen or heard from since.

That on September 22, 1978 a felony warrant for Interference with Child Custody was issued for Mark K. Bayless.

That on January 23, 1979 this affiant confirmed that Mark K. Bayless was living at 300 Highway 28, Crystal Bay, Nevada P.O. Box 1063, zip 89402.

That on January 23, 1979 this affiant contacted the Washoe County Sheriff's Dept. in Nevada, by teletype, by telephone and by sending a certified copy of the felony warrant to advise them of Mark Bayless' whereabouts.

That on or about February 13, 1979 this affiant was informed by the Washoe Co. Sheriff's Dept. that an attempt was made to apprehend Mark Bayless and that he had left the area.

That through postal inquiries in March, 1979 and June, 1979, Mark Bayless is still receiving mail at P.O. Box 1063, Crystal Bay, Nevada.

_____
Thomas W. Box

Subscribed and sworn to before
me this _____ day of August, 1979.

_____
Notary Public, Rock County, Wisconsin
My Commission Expires: 4/18/82

Please help our Mommy find us!

Taken by
Mark Kemp Bayless
& Wife Carol Corena
(Brereton)

Disappeared
July 1977

Contact:
Edith K. St. John
421 Elliott Street
Janesville, Wis. 53545
Phone: 608 / 752-8789

BENJAMIN (6) AND REBECCA (4) BAYLESS

Mark Kemp Bayless (pictured above)
D.O.B. 7-3-48
SS# 562-78-3468
6' 1", 180lbs, Brn/Brn, W/M

Additional information sheets and correspondence attached.

WAPNER KOPLOVITZ & FUTERFAS ATTORNEYS

JERRY WAPNER
JOSH KOPLOVITZ
ROD FUTERFAS

52 MAIN STREET, UPO BOX 3248, KINGSTON, N.Y. 12401
(914) 331-0100
45 MILL HILL ROAD, P.O. BOX 572, WOODSTOCK, N.Y. 12498
(914) 679-7207

REPLY TO: ☒ KINGSTON
☐ WOODSTOCK

September 9, 1981

Eric Sterling, Esq.
Subcommittee on Crime
U.S. House of Representatives
207 Cannon House Office Building
Washington, D.C. 20515

Re: Gloria Yerkovich

Dear Mr. Sterling:

Pursuant to your telephone request the other day, enclosed please find copies of the following documents relating to the kidnapping of my client's daughter, Joanna, by the child's father. In my view, there is no question but that a bona fide intent on the part of the Ulster County District Attorney to prosecute Franklin Pierce for the felony of custodial interference in the first degree, a class D felony, was frustrated by the U.S. Department of Justice:

1. Ulster County grand jury indictment 1-75 charging Franklin Pierce with the felony of custodial interference in the first degree.
2. Arrest warrant issued by Ulster County Court on January 10, 1975.
3. April 23, 1981 from Ulster County District Attorney Michael Kavanagh to U.S. Attorney for the Northern District of New York.
4. Letter from District Attorney Kavanagh to me dated May 13, 1981.
5. May 6, 1981, letter from U.S. Attorney Lowe to District Attorney Kavanagh.
6. May 14, 1981 letter from me to Gloria Yerkovich.

7. June 2, 1981 letter from District Attorney Kavanagh to me.
8. June 9, 1981 letter from me to District Attorney Kavanagh.

Both my client, Mrs. Yerkovich, and I greatly appreciate your interest in this case. Should you desire any further information or specifics with regard to the case, please do not hesitate to contact me.

Sincerely yours,

Joshua N. Koplovitz
JNK:rmr
encs.
cc: Patricia Hoff
Gloria Yerkovich
Hon. Michael Kavanagh

15-167 O—83——15

No. 1-75

COUNTY OF ULSTER

SUPREME Court

THE PEOPLE

against

FRANKLIN PIERCE,

Defendant.

Filed January 10, 1975.

Arraigned

Counsel for Defendant

Plead

INDICTMENT

CUSTODIAL INTERFERENCE IN THE FIRST DEGREE (PL 135.50).

Francis J. Vogt
District Attorney

A TRUE BILL

Foreman of the Grand Jury

STATE OF NEW YORK

SUPREME COURT : COUNTY OF ULSTER

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

FRANKLIN PIERCE,

Defendant.

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF ULSTER, by this indictment, accuses the defendant of the offense of CUSTODIAL INTERFERENCE IN THE FIRST DEGREE (PL 135.50), committed as follows:

The said defendant, in the County of Ulster, State of New York, on or about the 22nd day of December, 1974, being a relative of Joanna Pierce, a child less than sixteen years of age, intending to hold such child permanently or for a protracted period, and knowing that he has no legal right to do so, took such child from her lawful custodian under circumstances which exposed such child to a risk that her safety would be endangered, and her health materially impaired.

Francis J. Vogt

DISTRICT ATTORNEY OF ULSTER COUNTY

s/

FOREMAN, GRAND JURY

County of Ulster:

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

-against-

FRANKLIN PIERCE

AN INDICTMENT having been found on the ~~5th~~ 10th day of January, 1975, in the Supreme Court in and for the County of Ulster, charging FRANKLIN PIERCE with the Crime of Custodial Interference in the First Degree (PL 135.50)

and the said Indictment having been sent to the County Court of Ulster County:

YOU ARE, THEREFORE, COMMANDED forthwith TO ARREST the said FRANKLIN PIERCE and bring him before the County Court of Ulster County to answer the Indictment, or if the Court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of Ulster, *or if he require it, that you take him before any magistrate in that County, or in the County in which you arrest him, that he may give bail to answer the indictment.*

City of Kingston, County of Ulster, the ~~5th~~ 10th day of January, 1975.

By order of the Court,

/s/ Raymond Mundo

County Judge of the County of Ulster

OFFICE OF THE DISTRICT ATTORNEY

ULSTER COUNTY

Contents of original. Copy was sent to U.S. Atty by mistake.

285 WALL STREET • KINGSTON, NEW YORK 12401
AREA CODE 914-331-3315
CONSUMER AFFAIRS 914-339-5680

MICHAEL KAVANAGH
District Attorney

HOLLEY CARNRIGHT
First Assistant

JOHN J. COOK
SUSAN SHAW
DONALD A. WILLIAMS, JR.
WILLIAM J. WEIBHAUPT
JOSEPH L. CANINO
WILLIAM H. COLLIER III
DANIEL G. HEPPNER
ALBERT P. MRNLICKA
JOHN G. BISTI
Assistant District Attorneys

ROBERT E. FERRIGAN
Investigator

JON BURSTEIN
Consumer Affairs Director

April 23, 1981

Hon. George H. Lowe
United States Attorney's Office
Federal Building
Syracuse, NY 13201

Re: PEOPLE v. FRANKLIN PIERCE

Dear George:

On January 10th, 1975, the Ulster County Grand Jury filed an indictment charging Franklin Pierce with custodial interference in the first degree, a class D felony. The essence of the allegation against Mr. Pierce is that he wrongfully abucted Joanna Yerkovich, his six year old daughter, who at the time (pursuant to a court order) was living with her mother, Gloria Yerkovich.

Prior to the indictment being returned the defendant fled this jurisdiction with his daughter and, despite the efforts of this office and the New York State Police, he has not been located. Since it is apparent from our investigation that the defendant intentionally fled this jurisdiction to avoid prosecution, it is requested that a federal warrant be issued for his arrest charging him with unlawful flight to avoid prosecution.

I am confident that with the assistance of the Federal Bureau of Investigation we will be able to locate him and bring him back to this jurisdiction for the purpose of prosecution. Of course, our office is willing to pay any reasonable expense incurred concerning extradition proceedings involving Mr. Pierce's retur to Ulster County and provide any other assistance which you feel would be necessary to accomplish this purpose.

Finally, for your information I have enclosed copies of both the indictment and the warrant for Franklin Pierce's arrest which were issued in connection with this matter.

Very truly yours,

MICHAEL KAVANAGH
District Attorney

MK:klt
Enclosures
cc: Joshua Koplovitz, Esq.

U.S. Department of Justice

United States Attorney
Northern District of New York

369 Federal Building
100 South Clinton Street
Syracuse, New York 13260

May 6, 1981

Hon. Michael Kavanagh
Ulster County District Attorney
285 Wall Street
Kingston, New York 12401

Re: People v. Franklin Pierce

Dear Mike:

I am in receipt of your letter of April 23, 1981, with enclosures, requesting that we seek an arrest warrant against the above-named defendant for unlawful flight to avoid prosecution.

For your information I am enclosing herewith a copy of a directive from the Department of Justice dated February 17, 1981, concerning the use of the Fugitive Felon Act in parental kidnapping situations. As is stated on page 2 of the directive:

> In an effort to fulfill Congressional intent consistent with its other responsibilities, the Department will authorize FBI involvement under 18 U.S.C. 1073 in parental kidnapping cases where there is independent credible information establishing that the child is in physical danger or is being seriously neglected or seriously abused. Examples of such independent credible information include police investigations or prior domestic complaints to police or welfare agencies.

If this type of information is available and can be provided to us, we will be happy to seek the necessary Criminal Division authorization, as is discussed in the last paragraph of the directive.

I look forward to hearing from you.

Very truly yours,

GEORGE H. LOWE
United States Attorney

OFFICE OF THE DISTRICT ATTORNEY

ULSTER COUNTY

285 WALL STREET • KINGSTON, NEW YORK 12401
AREA CODE 914-331-3315
CONSUMER AFFAIRS 914-339-5680

MICHAEL KAVANAGH
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DANIEL G. HEPPNER
ALBERT F. HRDLICKA
JOHN O. SIETI
Assistant District Attorneys

ROBERT E. FERRIGAN
Investigator

JON BURSTEIN
Consumer Affairs Director

May 13, 1981

Joshua Koplovitz, Esq.
52 Main Street
Kingston, New York 12401

Re: People v. Franklin Pierce

Dear Josh:

Enclosed is a copy of a letter that I received from the United States Attorney concerning federal involvement in the prosecution of Franklin Pierce. As you will note, prior to officially entertaining such a complaint it is necessary for this office to present to the United States Attorney "...independent credible information establishing that the child is in physical danger or is being seriously neglected or seriously abused." Any evidence of this type which you are aware of would be most helpful in the drafting or formal request for assistance.

I await your call.

Yours truly,

s/Michael Kavanagh

MICHAEL KAVANAGH
District Attorney

MK:jr
Enclosure

May 14, 1981

Gloria Yerkovich
Child Find
P.O. Box 277
New Paltz, New York 12561

Re: Gloria Yerkovich - Pierce

Dear Gloria:

Upon receiving and reading the enclosures, I must say I was rather disappointed. It seems pretty obvious to me that the Justice Department has not changed its policy against becoming involved in parental kidnapping cases - despite the new federal law.

As you can see, before the feds will move, we must submit "independent credible information establishing that the child is in physical danger or is being seriously neglected or seriously abused" (wasn't that the standard that they were applying before the new law went into effect?), and, in addition, the U.S. Attorney must obtain specific authorization from the Justice Department.

My reading of the situation is that things have really not changed very much as far as the overall situation is concerned. I will be happy to meet with you and Ray at your convenience to discuss what, if anything, we can do in an effort to meet these specific requirements.

Sincerely yours,

Joshua N. Koplovitz
JNK/mkr
Encs.

OFFICE OF THE DISTRICT ATTORNEY

ULSTER COUNTY

285 WALL STREET • KINGSTON, NEW YORK 12401
AREA CODE 914-331-3315

MICHAEL KAVANAGH
District Attorney

HOLLEY CARNRIGHT
First Assistant

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TIMOTHY MURPHY
JOSEPH L. CANINO
WILLIAM H. COLLIER III
DANIEL G. HEFFNER
JOHN A. LEWIS
Assistant District Attorneys

ROBERT E. FERRIGAN
Investigator

JON BURSTEIN
Consumer Affairs Director

June 2, 1981

Joshua N. Koplovitz, Esq.
52 Main Street
Kingston, NY 12401

Re: People v. Franklin Pierce

Dear Josh:

On May 13th, 1981 I forwarded to you correspondence that I received from the United States Attorney's Office concerning the above mentioned matter. At that time I pointed out that prior to the federal authorities becoming actively involved in the prosecution of Franklin Pierce, it is necessary that we present to them evidence establishing that Joanna Pierce is in some type of physical danger or is being seriously neglected or seriously abused. As of yet I have not received any information which you or Mrs. Yerkovich would have at your disposal which would aid me in satisfying the United States Attorney that such a condition does exist.

Please forward to me, at your earliest convenience and as soon as possible, any information that you might have of this nature so that I can advise the United States Attorney and obtain his assistance.

Yours truly,

MICHAEL KAVANAGH
District Attorney

MK/pw

xx

June 9, 1981

Hon. Michael Kavanagh
Ulster County District Attorney
285 Wall Street
Kingston, New York 12401

Re: People v. Franklin Pierce (Gloria Yerkovich)

Dear Mike:

This is in response to your's of May 13 and June 2, 1981.

My apologies for not responding immediately to your first letter. Unfortunately, we are not presently in a position to make the required showing that Joanna Yerkovich "is in physical danger or is being seriously neglected or seriously abused."

It is even more unfortunate that the Justice Department is insisting on such a showing prior to entertaining an unlawful flight to avoid prosecution complaint. It is especially distressing in light of the plain language and legislative intent of the new Parental Kidnapping Prevention Act that the Fugitive Felon Act (18 U.S.C. 1073) shall apply in state felony parental kidnapping cases - without the necessity of any showing of threat of serious imminent physical injury or pattern of harmful conduct by the abducting parent (which the Justice Department had required in cases prior to the enactment of the new law).

Both Mrs. Yerkovich and I appreciate your continued interest and willingness to help. Unfortunately, before we can move further on this front, a change in the Justice Department's erroneous policy must be effected.

Sincerely yours,

Joshua N. Koplovitz
JNK/mkr
cc: Gloria Yerkovich

OFFICE OF THE MONROE COUNTY
DISTRICT ATTORNEY

DONALD O. CHESWORTH, JR
DISTRICT ATTORNEY

SUITE 201
HALL OF JUSTICE
CIVIC CENTER PLAZA
ROCHESTER, NEW YORK 14614
428-5680

SEP 21 1981

September 16, 1981

Honorable William J. Hughes
Chairman Subcommittee on Crime
Committee on the Judiciary
United States House of Representatives
Room 207
Cannon House Office Bldg.
Washington, D.C. 20515

Dear Congressman Hughes:

Thank you for the invitation to testify before the Subcommittee on Crime on September 24, 1981, regarding parental kidnapping. A prior commitment will not allow me to appear but I do wish to express my opinion regarding the Justice Department and the FBI's involvement in parental kidnapping cases.

My office recently handled a parental kidnapping case in which we made a request to the United States Attorney's Office for assistance. Our request for assistance was made in February of 1981, after the effective date of the new federal legislation. An individual had been indicted by a Monroe County Grand Jury for Custodial Interference in the First Degree, which is a felony in the State of New York. This indictment related to the parental kidnapping incident which occurred in the Rochester, New York, area in August of 1979. Substantial efforts had been made by my office and numerous other local law enforcement agencies in searching for this defendant throughout the eastern United States. This search had involved inquiries in New Jersey, Florida, Long Island, New York, and several other southeastern states. Our efforts had been totally unsuccessful, which was particularly disturbing to me because there was a real risk to the health of the two children who had been taken.

In February of 1981, when we contacted the United States Attorney's Office in Rochester, New York,

and requested that a fugitive warrant be issued to assist in the location of the defendant, the action on the part of the FBI and the United States Attorney's Office was prompt and expeditious. We received outstanding cooperation in this matter and Special Agent James Moynahan of the FBI immediately came to our office, where he reviewed our file and thoroughly familiarized himself with the background and circumstances of the case.

While the FBI was not the agency responsible for the ultimate location of the defendant and the two children, I cannot say enough about the outstanding cooperation extended to my office by the United States Attorney's Office in Rochester and the Federal Bureau of Investigation in Rochester. All people involved were thorough, professional, and enthusiastic regarding the investigation. Once the defendant was located in the State of Texas, the FBI notified us as to that fact and did everything within their power to assist us in the bringing of timely extradition proceedings against the defendant in Texas. Our experience with the Parental Kidnapping Act has been one of total and complete cooperation on the part of the federal authorities. Mr. Sterling, who is on your Committee's staff, inquired as to whether or not the issue of harm to the children had been raised by the United States Attorney's Office in our contacts with them. Inasmuch as the incident had resulted in an indictment and the Custodial Interference First Degree charge requires a showing of exposure to a risk of serious harm to the child, this issue was never discussed.

It is my opinion that the passage of the Parental Kidnapping Act and the efforts being made because of it by the United States Department of Justice and the Federal Bureau of Investigation, much will be done to eliminate this most serious law enforcement problem. If I may be of any further assistance to you or if you or any of the members of your staff have any further questions, please feel free to call upon me.

Very truly yours,

Donald O. Chesworth, Jr.

Donald O. Chesworth, Jr.
District Attorney of Monroe County

DOC:sd

Title 18, United States Code

§ 1073. Flight to avoid prosecution or giving testimony

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

(As amended Apr. 6, 1956, c. 177, § 1, 70 Stat. 100; Oct. 4, 1961, Pub.L. 87-368, 75 Stat. 795; Oct. 15, 1970, Pub.L. 91-452, Title III, § 302, 84 Stat. 932.)